

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1909.

No. 2046.

656

CHARLES H. MERILLAT AND MASON N. RICHARDSON,
TRUSTEES, APPELLANTS,

v8.

MELVILLE D. HENSEY, LYMAN D. LANDON, HELEN M.
SOULE, ANNIE HOLMES, CHARLES W. STEVENS, SUSIE
V. KIMBERLY, AND LEONARD H. DYER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED JULY 22, 1909.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1909.

No. 2046.

CHARLES H. MERILLAT AND MASON N. RICHARDSON,
TRUSTEES, APPELLANTS,

vs.

MELVILLE D. HENSEY, LYMAN D. LANDON, HELEN M.
SOULE, ANNIE HOLMES, CHARLES W. STEVENS, SUSIE
V. KIMBERLY, AND LEONARD H. DYER, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 2046.

CHARLES H. MERILLAT et al., Appellants,
vs.
MELVILLE D. HENSEY et al.

a Supreme Court of the District of Columbia.

Equity. No. 26396.

CHARLES H. MERILLAT, MASON N. RICHARDSON, Trustees,
Complainants, .

vs.

MELVILLE D. HENSEY, LYMAN D. LANDON, HELEN M. SOULE,
Annie Holmes, Charles W. Stevens, Susie V. Kimberly, Leonard
H. Dyer, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of
Columbia, at the City of Washington, in said District, at the times
hereinafter mentioned, the following papers were filed and proceed-
ings had, in the above-entitled cause, to wit:

1 *Bill.*

Filed June 30, 1906.

In the Supreme Court of the District of Columbia, Holding an
Equity Court for said District.

Equity. No. 26396.

CHARLES H. MERILLAT, MASON N. RICHARDSON, Trustees,
Complainants,

vs.

MELVILLE D. HENSEY, LYMAN D. LANDON, HELEN M. SOULE,
Annie Holmes, Charles W. Stevens, Susie V. Kimberly, Leonard
H. Dyer, Thomas G. Hensey, Defendants.

To the Supreme Court of the District of Columbia, holding an
Equity Court for said District:

The bill of complaint of the above named complainants respect-
fully represents as follows:

That they are citizens of the United States, and reside in the District of Columbia, and bring this suit as trustees by virtue of a decree of the Supreme Court of the District of Columbia, in Equity cause No. 24084, and to enforce the provisions thereof, as hereinafter stated.

2. That the defendants are all citizens of the United States, and are all residents of the District of Columbia excepting the defendant Charles W. Stevens, who resides at Nashua in the State of New Hampshire, and Leonard H. Dyer, who resides in the City of New York, State of New York; and the defendants are all sued in their own right, the defendants Thomas G. Hensey and Melville D. Hensey being also sued as trustees and grantors under a certain deed hereinafter referred to.

The defendants Lyman D. Landon and Susie V. Kimberly are sued as the fraudulent and pretended grantees under said deed, and as holding their said pretended interests thereunder and upon a secret trust for the benefit of said defendants Thomas G. Hensey and Melville D. Hensey. All the defendants excepting the defendants Lyman D. Landon and Susie V. Kimberly, who only hold a pretended interest, are sued as the members of a syndicate called the "Dry Meadows" syndicate. The said defendants Thomas G. Hensey and Melville D. Hensey are sued as the judgment debtors of the complainants, under said decree in equity hereinbefore referred to, and the object of this proceeding is to subject the said interests of the said Thomas G. Hensey and Melville D. Hensey in said lands and premises to the payment of said judgment or decree.

3. That heretofore, to wit: on the 24th day of May, A. D. 1906, your complainants as trustees recovered a decree in Equity in the Supreme Court of the District of Columbia against the defendants Thomas G. Hensey and Melville D. Hensey, among other things for the sum of \$15,445.07 and the further sum of \$53,819.17, with execution as at law awarded thereupon. That heretofore, to wit: on the — day of June 1906, fi. fa. was issued upon said decree as at law, and the same on the — day of June 1906, was by the Marshal returned "nulla bona," all which will appear by a short copy of said writ of fi. fa. hereto attached and prayed to be taken as a part hereof and marked as complainant's exhibit "A." That said defendants Thomas G. Hensey and Melville D. Hensey have no property so far as complainants are advised subject to execution at law, from which satisfaction of said decree can or could be realized. That no part of said decree or money award has been paid. That a true and examined copy of said decree is herewith attached and marked complainant's Exhibit "B."

4. That by deed, duly recorded in Liber 1891, folio 184 et seq. of the records in the office of the Recorder of Deeds in and for the District of Columbia, there was conveyed to the defendants Melville D. Hensey and Thomas G. Hensey, the following described real estate, situate in the County of Washington, District of Columbia, and being part of the tract of land in said County and District, known as "Dry Meadows," beginning for the same at a stone and corner of the late Charles R. Belts' land, and running thence south $41\frac{3}{4}$ de-

grees, east 57.84 perches, to a stone; thence north 44 degrees, and east 13.68 perches to a stone on Broad Branch road; thence north $15\frac{1}{2}$ degrees west 58.12 perches to Jones' line; thence north 60 degrees west 2.32 perches to a stone, and thence south $50\frac{3}{4}$ degrees west 38 perches to the place of beginning, in trust for certain parties, who possessed interests therein undisclosed of record. That the said Lyman D. Landon had no interest therein at any time, and more especially he had no interest therein prior to the 24th day of August 1903, the time when by its decree hereinbefore referred to

4 and made part hereof the complainants were by the Equity Court of the Supreme Court of the District of Columbia declared to have an interest in or lien upon the interests of said Thomas G. Hensey and Melville D. Hensey in and to said lands and premises; and the said Susie V. Kimberly likewise was without any interest in said lands and premises prior to the aforesaid 24th day of August 1903. But your complainants, upon information and belief, and so believing aver that the said Thomas G. Hensey and Melville D. Hensey were the owners at the time of the formation of said syndicate, and the acquisition of said lands and premises and the taking of title thereto in their names as such trustees the owners of six-tenths interest in said lands and premises, and that they continued to be such owners up to the time of the making and execution of the deed hereinafter referred to, and now are the true and real owners of said six-tenths interest in said lands and premises, which has in and by said deed hereinafter referred to been fraudulently conveyed to said parties, some or all of them, and more especially to the said Lyman D. Landon and to the said Susie V. Kimberly for the purpose of hindering, delaying and defrauding the creditors of the said Thomas G. Hensey and Melville D. Hensey and should be canceled and declared null and void.

4. That heretofore to wit; on the 21st day of May 1906 the said Thomas G. Hensey and Melville D. Hensey, trustees, as aforesaid conspiring with themselves and some of their co-defendants, and in fraud of the rights of the complainants, and in order to defeat the execution of the decrees hereinbefore referred to and to hinder

5 and delay your complainants, as their creditors, as well as all other persons possessing true and lawful claims against them did by their deed duly recorded in Liber 3003 folio 447 et seq., of the records in the office of the Recorder of Deeds in and for the District of Columbia, convey the said lands and premises hereinbefore fully and at large described in paragraph three hereto the defendants Charles W. Stevens, Leonard B. Dyer, Hellen M. Soule, Annie Holmes, Lyman D. Landon, Susie V. Kimberly. That the interests of the said defendants are by said deed wrongfully and fraudulently, and for the purpose as hereinbefore stated of fraud on the rights of the creditors of the said Thomas G. Hensey and Melville D. Hensey, and more particularly your complainants stated to be as follows: Charles W. Stevens, $\frac{1}{10}$ interest, Leonard H. Dyer, $\frac{1}{10}$ interest, Helen M. Soule, $\frac{1}{10}$ interest, Annie Holmes $\frac{1}{10}$ interest, Lyman D. Landon $\frac{3}{10}$ interest and Susie V. Kimberly $\frac{3}{10}$ interest.

5. Your complainants are advised and believe and therefore aver that they are entitled in this Honorable Court to have the hereinbefore mentioned deed canceled and set aside, your complainants decree- to have a six-tenths (6/10) interest therein and to have the said land which is unproductive and a drain on the resources of the said syndicate sold and the proceeds thereof distributed among the several persons interested therein in ratios properly due to each according to their respective interests.

Your complainants being without remedy save in a court of Equity pray as follows:

1. That the defendants Lyman D. Landon, Helen M. Soule, Annie Holmes, Charles W. Stevens, Susie V. Kimberly, Leonard H. Dyer, Thomas G. Hensey, and Melville D. Hensey be duly served with process, made parties hereto as defendants and required to answer the exigencies of this bill, answer under oath from each of said defendants being hereby expressly waived.

That in respect of the defendants Charles W. Stevens and Leonard H. Dyer, inasmuch as they are non-residents of the District of Columbia, as to them complainants may be awarded an order of publication as provided by law.

That the deed referred to in the 4th paragraph hereof be set aside and declared fraudulent for the reasons set forth in this bill and all the right, title and interest of said Thomas G. Hensey and Melville D. Hensey in and to said lands and premises more particularly described in the third paragraph hereof be sold, and from the proceeds of sale and out of the amount found to be due and payable as their interests therein, the judgment and decree hereinbefore referred to be paid, together with costs of this suit.

That for said purpose trustee or trustees be appointed by the court.

3. And for such other and further relief as the nature of the case may require and to Equity may seem proper and just.

CHARLES H. MERILLAT,
MASON N. RICHARDSON,

Complainants.

MASON N. RICHARDSON,
C. H. MERILLAT,

Solicitors.

7 DISTRICT OF COLUMBIA, *To wit:*

I, Charles H. Merillat on oath say I have read the foregoing petition by me subscribed and know the contents thereof, and that the matters therein stated as of my own knowledge are true and that the matters therein stated on information and belief I believe to be true.

CHARLES H. MERILLAT.

Subscribed and sworn to before me this 30th day of June, A. D. 1906.

[SEAL.]

CLAUDE D. THOMAS,
Notary Public, D. C.

Filed Jun. 30, 1906.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Equity. No. 24084.

CHARLES W. RICHARDSON et al.

vs.

THOMAS G. HENSEY et al.

This cause coming on to be heard upon the pleadings, testimony, and other proceedings herein, including the several auditors' reports filed herein on the 2nd day of February 1906 and on the 27th day of March 1906, and after hearing argument of counsel for the respective parties hereto, it is by the Court this 24th day of May A. D. 1906 ordered, adjudged, and decreed as follows:

First. That the said Auditors' reports be and the same hereby are affirmed.

Second. That the defendants Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey be and they hereby are decreed and declared jointly and severally to have received of the complainants and the other parties to this suit, the members of the Le Droit Park Land Syndicate as a trust fund, and to have illegally withheld from said Syndicate or parties the sum of \$25,896, said trust fund with compound interest thereon amounting on January 10, 1906 to the sum of \$53819.17, and said defendants aforesaid are ordered, and directed to pay over said trust fund of \$53819.17, with interest thereon from January 10 1906 to date of payment to Charles
9 H. Merillat and Edward H. Thomas, as trustees for the Le Droit Park Land Syndicate, on or before the 20 day of June A. D. 1906.

Third. That the defendants Thomas G. Hensey, and Melville D. Hensey are decreed and declared to account to complainants and the other parties to this suit, the members of the Le Droit Park Land Syndicate through said Trustees, Charles H. Merillat and Edward H. Thomas, aforesaid for the further and additional sum of \$15445.07, with interest thereon from the date hereof, and that the defendant Mellen C. Hooker is decreed and declared to account to the parties aforesaid through said trustees as aforesaid for the further and additional sum of \$13887.85, over and above the amount of trust funds found heretofore to be due by them.

Fourth. That the trustees hereinbefore named Edward H. Thomas and Charles H. Merillat, as trustees for the Le Droit Park Land Syndicate have a judgment and decree against the defendants Thomas G. Hensey and Melville D. Hensey for the hereinbefore mentioned sums of \$53819.17 with interest thereon from January 6, 1906, and for the further and additional sums hereinbefore mentioned of \$15445.07, and against the defendant Mellen C. Hooker for the hereinbefore mentioned sums of \$53819.17, with interest thereon from January 6, 1906, and for the further and additional sum hereinbefore mentioned of \$13887.85, besides the costs of this suit,

said costs to be borne by all three defendants herein named jointly and severally including the costs of all proceedings before the Auditor, and a counsel fee of \$5000 to be paid to the attorneys for complainants herein, and that the trustees aforesaid, Edward H. Thomas, and Charles H. Merillat as trustees for the Le Droit Park Land Syndicate have execution thereon as at law.

Fifth. That there be and there hereby is awarded to counsel for complainants in this cause Mason N. Richardson, Charles H. Merillat and Eugene Carusi, a fee of \$9000 for their services, said fee to be paid out of the funds or estate of the Le Droit Park Land Syndicate, or out of any moneys recovered hereinafter from the defendants Thomas G. Hensey, Mellen C. Hooker, or Melville D. Hensey.

Sixth. That the trustees aforesaid are adjudged, and decreed to hold the shares in the Le Droit Park Land Syndicate standing in the names of the defendants Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey on the books of the Le Droit Park Land Syndicate for the use of the said Syndicate, and said syndicate is declared to have a lien on said shares originally issued in the names of Thomas G. Hensey, Mellen C. Hooker or Melville D. Hensey, for the sum of \$500 unpaid purchase price on each of said shares, with interest thereon at the rate of 6 per cent per annum, from January 19, 1893, and Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey are ordered and directed to turn over and deposit their original shares aforesaid with the aforesaid present trustees of the Le Droit Park Land Syndicate.

Seventh. That unless the money decree of \$53819.17 hereinbefore directed to be made be satisfied on or before the 20 day of June A. D. 1906 Thomas G. Hensey be and he is hereby adjudged to have held all his right, title, and interest as of date the 24th day of August 1903, the date of the service of an amendment to complainants' bill naming said property as having been purchased with the fruits of the fraud perpetrated on his co-syndicate members by Thomas G. Hensey in and to the following described lands and premises, to wit:

Lot 19, in section 3 of Barry Farm, a subdivision in the County of Washington, District of Columbia.

Lot 13, in Loomis subdivision of square 65 in the City of Washington, District of Columbia.

Lot 51, in Gibbs' subdivision of square 520 in the City of Washington, District of Columbia, as trustees for the Le Droit Park Land Syndicate, and he hereby is ordered and directed to make conveyance as of date, August 24, 1903, and to have effect when recorded as of said date, all of his right, title and interest in the real estate aforesaid, to Charles H. Merillat and Edward H. Thomas, as trustees for the Le Droit Park Land Syndicate, and should said Thomas G. Hensey neglect or refuse to comply with this paragraph of this decree, then this paragraph of this decree shall have the same operation and effect as if the conveyance had been executed conformably to this decree, and said Charles H. Merillat and Edward H. Thomas are authorized and directed as trustees as aforesaid to sell said real estate described aforesaid in this paragraph unless the same has been pre-

viously sold under some prior deed of trust or recorded obligation as hereinbefore set forth, free and discharged from the effect of any transfers or conveyances by said Thomas G. Hensey or his grantees not of record among the land records of the District of Columbia,

12 on or before the 24th day of August 1903 aforesaid. The manner of such sale of the aforesaid real estate shall be as provided by Equity rule 91, of the Supreme Court of the District of Columbia. It is further declared, adjudged, and decreed that all transfers or conveyances of said real estate not of record on or before said 24th day of August 1903 aforesaid but attempted to be recorded since said date are subject and postponed to the provisions of this paragraph of this decree, and satisfaction of the aforesaid sum of \$53819.17, unless the same have been made under the provisions of some deed of trust or other prior obligation of record prior to the aforesaid 24 day of August 1906, and in the event that said real estate has been sold since said 24th day of August 1903, under some prior valid deed of trust or other obligation of record prior to the 24 day of August 1903, then all the right, title and interest of Thomas G. Hensey, in the equity of redemption therein is vested in Charles H. Merillat and Edward H. Thomas, as trustees for the Le Droit Park Land Syndicate, and they are hereby authorized and directed to take such steps as may be deemed necessary by them to reduce said equity of redemption to possession.

Eighth. That unless the money decree of \$53819.17 hereinbefore directed to be made be satisfied on or before the 20 day of June, A. D. 1906, Mellen C. Hooker be and he hereby is adjudged to have held all his right, title, and interest as of date the 24th day of August 1903, the day of the service of the amendment to complainant's bill naming said property as having been purchased with the fruits of the fraud perpetrated on his co-syndicate members, of Mellen C.

13 Hooker in and to the south thirty two feet by the full depth thereof of lot 18 in square 1110 in the City of Washington, District of Columbia, as trustee for the Le Droit Park Land Syndicate, and he is hereby ordered and directed to make conveyance as of date of 24 of August 1903 and to have effect when recorded as of said date of all his right, title, and interest in the real estate aforesaid to Charles H. Merillat and Edward H. Thomas as trustees for the Le Droit Park Land Syndicate, and should said Mellen C. Hooker neglect or refuse to comply with this paragraph of this decree then this paragraph of this decree shall have the same operation and effect as if the conveyance had been executed conformably to this decree, and said Charles H. Merillat and Edward H. Thomas are authorized and directed as trustees as aforesaid to sell said south 32 feet by the full depth thereof of lot 18 in square 1110 in the City of Washington, District of Columbia, unless the same has been previously sold under some prior recorded deed of trust or recorded obligation as hereinafter set forth free and discharged from the effect of any transfers or conveyances by said Mellen C. Hooker or his grantees not of record among the land records of the District of Columbia on or before the 24 day of August 1903, aforesaid. The manner of such sale of the aforesaid real estate shall be as provided by Equity

rule 91, of the Supreme Court of the District of Columbia. It is further declared, adjudged, and decreed that all transfers or conveyances of said real estate not of record on or before said 24 day of August 1903 aforesaid but attempted to be recorded since said date are subject and postponed to the provisions of this paragraph 14 of this decree and satisfaction of the aforesaid sum of \$53819.17, unless the same have been made under the provisions of some deed of trust or other prior obligation of record prior to the aforesaid 24th day of August 1903, and in the event that said real estate has been sold since said August 24, 1903, then all the right, title, and interest of Mellen C. Hooker in the Equity of Redemption therein is vested in Charles H. Merillat and Edward H. Thomas, as trustees for the Le Droit Park Land Syndicate, and they are hereby authorized to take such steps as may be deemed necessary by them to reduce said Equity of redemption to possession.

Ninth. That unless the money decree of \$53819.17 hereinbefore directed to be made be satisfied on or before the 20 day of June 1906, Thomas G. Hensey be and he hereby is adjudged to have held all his right, title, and interest as of date the 24 day of August 1903, the date of the service of an amendment to complainants' bill naming said property as having been purchased with the fruits of the fraud perpetrated on his co-syndicate members by Thomas G. Hensey, in and to the following described real estate and tract of land known as "Dry Meadows," in the County of Washington, District of Columbia, and more particularly described as follows:

Beginning for the same at a stone marking corner late Charles R. Belts' land, and running thence with $41\frac{3}{4}$ degrees east 57.84 perches to a stone, thence North 44 degrees east 1.68 perches to a stone on Broad Branch road, thence $15\frac{1}{2}$ degrees west 58.12 perches to Jones' line, thence north 60 degrees west 2.32 perches to a stone to place of beginning, containing 9.40 acres of land more or less as trustees for the Le Droit Park Land Syndicate, and he hereby is 15 ordered and directed to make conveyance as of date the 24 day of August 1903, and to have effect when recorded as of said date of all his right, title, and interest in the real estate aforesaid, to Charles H. Merillat and Edward H. Thomas as trustees for the Le Droit Park Land Syndicate, and should said Thomas G. Hensey neglect or refuse to comply with this paragraph of this decree, then this paragraph of this decree shall have the same operation and effect as if the conveyance had been executed conformably to this decree, and said Charles H. Merillat and Edward H. Thomas are authorized and directed as trustees as aforesaid to sell the interest of Thomas G. Hensey in the aforesaid 9.40 acres of the aforesaid tract known as Dry Meadows free and discharged from the effect of any transfers or conveyances by said Thomas G. Hensey or his grantees not of record among the land records of the District of Columbia on or before the 24 day of August 1903, aforesaid. The manner of such sale of the interest of the said Thomas G. Hensey in the aforesaid real estate shall be as provided by Equity rule 91, of the Supreme Court of the District of Columbia. It is further declared, and adjudged, and decreed that all transfers or conveyances of the interest

of said real estate not of record on or before the said 24 day of August 1903 aforesaid but attempted to be recorded since said date are subject and postponed to the provisions of this paragraph of this decree and satisfaction of the aforesaid sum of \$53819.17, unless the same have been made under the provision of some deed of trust or other prior obligation of record, prior to the aforesaid 24 day of

16 August 1903, and in the event that the interest of the said Thomas G. Hensey in the said real estate has been sold since said 24 day of August 1903, under some prior obligation recorded deed of trust or other obligation of record prior to the 24 day of August 1903, then all the right, title and interest of said Thomas G. Hensey in the Equity of redemption therein is vested in Charles H. Merillat and Edward H. Thomas as trustees, for the Le Droit Park Land Syndicate, and they are hereby authorized and directed to take such steps as may be deemed necessary by them to reduce said Equity of redemption to possession.

Tenth. That unless the money decree of \$53819.17 hereinbefore directed to be made be satisfied on or before the 20 day of June 1906, Thomas G. Hensey, Mellen C. Hooker, and Melville D. Hensey be and they hereby are adjudged and decreed to have made all their payments made subsequent to the 19 day of January 1893 on account of their interests in what is described in the proceedings as the Norwood real estate company, and the District Investment Company and the Ten Syndicate with the moneys of the Le Droit Park Land Syndicate, and they hereby are declared and decreed to hold their interests in said land companies and syndicates aforesaid acquired by or through payments made since January 19, 1893, as trustees for the Le Droit Park Land Syndicate, and Charles H. Merillat and Edward H. Thomas as trustees for said Le Droit Park Land Syndicate are authorized and directed to take such steps as may be deemed necessary by them to reduce to possession said interests of said defendants in the said land companies and syndicate aforesaid, and to hold the same for the use and benefit of the Le Droit

17 Park Land Syndicate, said Charles H. Merillat and Edward H. Thomas to succeed to all the rights, and interests of said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, in the said land companys or syndicate aforesaid, as of date of August 24, 1903.

By the Court.

WENDELL P. STAFFORD, *Justice*.

From the aforesaid decree the defendants in open Court have noted an appeal to the Court of Appeals, the penalty of the bond for costs is hereby fixed at one hundred dollars.

WENDELL P. STAFFORD, *Justice*.

18

Filed Jun- 30, 1906.

This indenture made this 19th day of May A. D. 1906, by and between Thos. G. Hensey and Melville D. Hensey, Trustees in trust, under a deed in trust dated on the 13th day of February 1891, of Washington, District of Columbia, parties of the first part; and

Charles W. Stevens, of Nashua, N. H., Leonard H. Dyer of New York, Helen M. Gould of Washington, D. C., Annie Holmes of Washington, D. C., Lyman D. Landon of Washington, D. C. and Susan V. Kimberly, of Washington, D. C. parties of the second part;

Witnesseth, that for and in consideration of the respective interests of the parties of the second part, heretofore held as shareholders, and under declarations in trust, and shares held on collateral notes, showing the following interests; to Charles *Charles* W. Stevens one tenth undivided interest; to Leonard H. Dyer, one tenth undivided interest; to Helen M. Soule, one tenth undivided interest; to Annie Holmes, one-tenth undivided interest; to Lyman D. Landon, three tenths undivided interest, to Susan V. Kimberly, three tenths undivided interests;

And in consideration of the interests herein described, and for the purpose of securing said parties individually in their holdings, the consideration therefor having been given before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, and conveyed, and do by these presents bargain, sell, alien, enfeoff, release, and convey unto the parties of the second part, their heirs or assigns, as tenants in common, forever, the following described real estate, situate in
 19 the County of Washington, District of Columbia, to wit: part of the tract of land in the County of Washington, in the District of Columbia, known as "Dry Meadows."

Beginning for the same at a stone, a corner of the late Charles R. Belt's land and running thence south $41\frac{3}{4}$ degrees east 57.84 perches to a stone; thence north 44 degrees east 13.68 perches to a stone on Broad Branch road, thence north $15\frac{1}{2}$ degrees west 58.12 perches to Jones' line, thence north 60 degrees west 2.32 perches to a stone, and thence south $50\frac{3}{4}$ degrees west 38 perches to the place of beginning, containing 9.40 acres of land more or less, together with the improvements, rights, privileges, and appurtenances to the same belonging.

And the said parties of the first part covenant that they will warrant specially the property hereby conveyed, that they are seized of the land hereby conveyed, that they have a right to convey said land; that the said parties of the second part shall quietly enjoy said land, that they have done no act to encumber said lands and that they will execute such further assurances of said land as may be requisite.

Witness our hands and seals the day and year hereinbefore written.

THOS. G. HENSEY. [SEAL.]
 MELVILLE D. HENSEY. [SEAL.]

In presence of
 E. E. RAMEY.

DISTRICT OF COLUMBIA, *To wit:*

20 I, E. E. Ramey, a notary Public in and for the District of Columbia, do hereby certify that Thos. G. Hensey and Melville D. Hensey trustees in trust under a deed in trust parties to a certain deed bearing date on the 19th day of May A. D.

1906, and hereto annexed, personally appeared before me in said District, the said Thos. G. Hensey and Melville D. Hensey being personally well known to me as the persons who executed the said deed and acknowledged the same to be their act and deed.

Given under my hand and seal this 21 day of May 1906.

[NOTARIAL SEAL.]

E. E. RAMEY.

21

Filed Jun- 30, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 24084.

CHARLES W. RICHARDSON et al.

vs.

THOMAS G. HENSEY et al.

This cause coming on to be heard on petition of Edward H. Thomas, Trustee, to be allowed to withdraw and resign as such trustee it is by the Court on consideration thereof, this 5th day of June, 1906, ordered, that the resignation of said Edward H. Thomas as such trustee be and the same is hereby accepted, and the said trustee is hereby relieved from all duties as such on, from and after this day. And it is further ordered that Mason N. Richardson be and he is appointed trustee in place of said Edward H. Thomas, with all the rights, powers, and duties heretofore vested in said Edward H. Thomas in this cause, provided however that said Mason N. Richardson before entering on the discharge of said duties shall file herein his several bond to be approved by the Court in and for the sum of ten thousand dollars (\$10000), and further, that this cause be and the same is hereby referred to the Auditor of this Court to state the account of the trustee Charles H. Merillat and Edward H. Thomas.

WENDELL P. STAFFORD, *Justice*.

"Complainants' Exhibit E."

22

Answer of Annie Holmes.

Filed August 1, 1906.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

Equity. No. 26396.

CHARLES H. MERILLAT, MASON N. RICHARDSON, Trustees,
Complainants,

vs.

MELVILLE D. HENSEY, LYMAN D. LANDON, HELEN M. SOULE, ANNIE Holmes, Charles W. Stevens, Susie V. Kimberly, Leonard H. Dyer, Thomas G. Hensey, Defendants.

First. The defendant Annie Holmes neither admits nor denies the complainants citizenship and has no knowledge of Equity No. 24084.

Second. She admits that she is a citizen of the District of Columbia but neither admits nor denies the citizenship of the other defendants. She has no knowledge as to the interest of Lyman D. Landon and Susan V. Kimberly.

Third. The defendant has no information respecting the decree alluded to in this paragraph.

Fourth. The defendant has no information, except from Thomas G. Hensey, that John H. Soule, Trustee, retired as such several years after the organization of the syndicate on account of financial trouble and Melville D. Hensey was substituted as Trustee,
23 but has no information that he held any interest therein at any time. That the defendant neither admits nor denies the description of the land. The defendant Annie Holmes says she bought a share of stock of Thomas G. Hensey in February, 1891, that her attention was called to the property by a friend of hers, that her interest was and is now one-tenth. A friend, Mrs. Dyer, now deceased, mother of the present Leonard H. Dyer who now claims the stock, also purchased a one-tenth interest, and Colonel Stevens, whom she knew through Mrs. Dyer, purchased a one-tenth interest. She has no personal knowledge of any of the other holders of stock in the said syndicate, excepting Thomas G. Hensey from whom she purchased her share. She purchased at the price at which it was then offered and under the terms of the sale, and that she has fully paid for her stock and the proportionate part of the taxes. The business was managed by Mr. Hensey.

4½. The defendant Annie Holmes admits receiving information from Thomas G. Hensey on or about the 21st of May, 1906, that the share-holders in interest and some others holding his shares as security on collateral notes for moneys borrowed by him, held the property by deed according to the interest described in this bill of complaint, including her one-tenth interest.

Fifth. The defendant Annie Holmes objects to this method of selling the land and says that in her opinion a forced sale would be injurious to herself and other shareholders. This defendant further says that the deed should not be set aside as the same has disclosed of record the respective interests of each shareholder
24 and has become a vested right and no advantage can be had by setting aside said deed. The defendant further says if the shares belonging, as alleged, to Thomas G. Hensey, and now held by Lyman D. Landon and Susan V. Kimberly and as alleged in the Bill held in fraud of the said Hensey's creditors they should be looked to solely and not innocent third parties who have no interest in the affairs of the Henseys. The defendant says as to the second prayer, she can see no good reason why a new trustee should be called in to do what the former trustees were prevented from doing by Equity Bill 25840, and now that the shareholders hold their respective interests by deed of record together, such deed should not be disturbed as the land can be sold as a whole on the signatures of all the parties when an acceptable price is offered without further and unnecessary expense.

The defendant having answered every material allegation, prays:

That the bill be dismissed with her costs and reasonable attorney's fees.

ANNIE HOLMES, *Defendant*.

DISTRICT OF COLUMBIA, ss:

I, Annie Holmes, on oath say I have read the foregoing answer by me subscribed and know the contents thereof and that the matters therein stated as of my own knowledge are true and that the matters therein stated on information and belief, I believe to be true.

ANNIE HOLMES.

25 Subscribed and sworn to before me, this 1st day of August,
A. D. 1906.

[SEAL.]

FRED. G. ROSE,
Notary Public, D. C.

Answer of Thomas G. Hensey and Melville D. Hensey.

Filed August 2, 1906.

In the Supreme Court of the District of Columbia, Holding an
Equity Court for said District.

Equity. No. 26396.

CHARLES H. MERILLAT, MASON N. RICHARDSON, Trustees,
Complainants,

vs.

MELVILLE D. HENSEY, LYMAN D. LANDON, HELEN M. SOULE, ANNIE
Holmes, Charles W. Stevens, Susie V. Kimberly, Leonard H.
Dyer, Thomas G. Hensey, Defendants.

1st. The defendants admit the citizenship of the complainant trustees, but deny the justice of enforcing Equity Decree 24084.

2d. The defendants admit the citizenship, but deny that Landon and Kimberly are fraudulent and pretended grantees under a deed referred to upon a secret trust and allege that Landon, in August,

1901, in a settlement with the defendant Thomas G. Hensey,
26 bought one share, of the ten shares, and in September, 1901,

loaned said defendant Thomas G. Hensey on two other shares for which said Thomas G. Hensey gave his collateral note secured by two shares of Dry Meadows stock, known as the Broad Branch Syndicate. That the defendants Thomas G. Hensey and Melville D. Hensey deny that they are indebted to said Trustees for any sum whatever. That the said defendant Melville D. Hensey never had any interest, direct or indirect, in this land.

3d. The defendants above named deny any indebtedness to said trustees. They further deny the right under the Decree of said Trustees to levy execution on the 20th of June, 1906, which was

done and property belonging to innocent third parties seized, and private correspondence read, some of which was seized. The defendants deny any interest in said property, except that hereinafter stated.

4th. The defendants Thomas G. Hensey and Melville D. Hensey admit that they were trustees in trust for the shareholders of 9 4/10 acres of land on the Broad Branch Road, but neither deny nor admit the accuracy of complainants' description of said land and challenge strict proof. The defendants deny the allegations of complainants that Landon had no interest in said land prior to the 24th of August, 1903, and the defendant Thomas G. Hensey says Landon bought one share from him in August 1901, for \$1200, and subsequently in September 1901, Landon loaned said Thomas G. Hensey \$1600 on two shares in said syndicate, a collateral note being given by said Thomas G. Hensey as evidence of said indebtedness to said

27 Landon. The defendants Thomas G. Hensey and Melville D. Hensey deny that Melville D. Hensey was a trustee at the formation of the syndicate or that he had any interest whatever at the formation, or at any time since, or that he has any interest now, and says he was made a substitute trustee several years after the formation of said syndicate on the retirement of John H. Soule, as will appear by the records in the Office of the Recorder of Deeds. The defendants Thomas G. Hensey and Melville D. Hensey deny that they have any interest other than an equity in five shares belonging to Thomas G. Hensey as above stated, pledged for \$4100, namely to Mrs. Kimberly for \$2500 and Mr. Landon \$1600. They further deny that they are the true owners of six-tenths as alleged by the complainants. They deny conveyance for the purpose of hindering and defrauding the complainants or anyone else, and say the conveyance made was for bona fide consideration, as stated, and that Mrs. Kimberly loaned \$2500 to Thomas G. Hensey in November, 1903, on a Certificate of Title by the Columbia Title Company that said Title was good in the Trustees in trust for the shareholders at that time. The defendants Thomas G. Hensey and Melville D. Hensey further deny that they are debtors to the complainant trustees.

4 1/2. The defendants admit the filing of a deed on the 21st of May 1903, conveying the true interest in fee to all the parties, holding under declarations in trust, and shares held by collateral notes as a further evidence of their rights by disclosing names of record, and references made to said deed in Liber 3003 folio 447 of the Office of the Recorder of Deeds. That Charles W. Stevens, Leonard H. Dyer's mother, Helen M. Soule, Annie Holmes, had one-tenth each, 28 and Thomas G. Hensey held six-tenths, and they were original shareholders, which was organized about February 1891.

5th. The defendants deny the complainants desire to have the land sold and say that the defendant Thomas G. Hensey was advertising the property extensively for a long period of time, and would probably have sold or exchanged the same, but for the complainants' action by the filing of Equity Bill 25840, which suit has been dismissed since the institution of this suit. The defendant Thomas G. Hensey denies the right of anyone on any principle of equity to

jeopardize the rights of the innocent shareholders or persons who loaned their money on the shares, not parties to this suit, by a forced sale. The defendant Thomas G. Hensey says that the five shareholders above named should not be disturbed and that the two shares held by Mr. Landon for \$1600 on a collateral note are forfeited and that the three shares held by Mrs. Kimberly on which she loaned him \$2500 will mature November 9, 1906. The defendant Thomas G. Hensey further says that the selling of the one-half undivided interest, on which there is an obligation of \$4100, provided the right of Mr. Landon to retain on collateral note, the same having matured, is waived, and the claim of Mrs. Kimberly for \$2500 and interest is paid on or before November 9, 1906, and the said undivided interest sells for more than the above claims, the surplus, if any, would be held subject to the termination of this litigation. The defendant Thomas G. Hensey says there is no good reason why any of the shareholders or persons who loaned money on collateral notes

29 should be put to any expense in this matter, except to please the complainants' attorney Charles H. Merillat and his associates. The defendants Thomas G. Hensey and Melville D. Hensey, having answered every material allegation set out in this Bill, respectfully ask the Court to dismiss the Bill with their reasonable costs and attorney's fee.

MELVILLE D. HENSEY.
THOS. G. HENSEY.

Subscribed and sworn to before me this 1st day of August A. D. 1906.

[SEAL.]

E. E. RAMEY,
Notary Public, D. C.

Answer of Charles W. Stevens.

Filed August 6, 1906.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

Equity. No. 26396.

CHARLES H. MERILLAT, MASON N. RICHARDSON, Trustees, Complainants,

vs.

MELVILLE D. HENSEY, LYMAN D. LANDON, HELEN M. SOULE, ANNIE Holmes, Charles W. Stevens, Susie V. Kimberly, Leonard H. Dyer, Thomas G. Hensey, Defendants.

30 First. That the defendant neither denies nor admits the citizenship of the complainant or of Equity Cause 24084.

Second. That the defendant admits his citizenship as stated in said paragraph, but neither denies nor admits the citizenship of the other defendants and demands strict proof, and has no knowledge

of the judgment against Thomas G. Hensey and others, except such as given him by Mr. Hensey's letter.

Third. That he has no knowledge of the matters and things contained therein and has no personal interest therein.

Fourth. That as to description made of said land in said paragraph, he neither denies nor admits the same, but challenges strict proof, or any of the other matters and things contained in said paragraph. He denies, so far as he is concerned, that the conveyance of the respective interests on the 21st of May, 1906, of one-tenth interest to himself, was in fraud of the rights of anyone else but on information and belief was intended to protect the rights and interests of bona fide holders of shares of stock in what is known as the Broad Branch Syndicate. He denies any conspiracy with the defendants or anyone else to defeat the complainants or any creditors of the Henseys whatsoever or whomsoever. He says that the one-tenth interest that was conveyed to him in fee simple by Thomas G. Hensey and Melville D. Hensey as above indicated was purchased by him on or about February 1891 and his certificate was signed at that time by Thomas G. Hensey and John H. Soule, Trustees in trust, and as he is informed and believes, John H.

31 Soule on account of financial troubles, retired as trustee in 1894 and was succeeded as trustee by Melville D. Hensey, and that he has never had any information that Melville D. Hensey had any interest in said land or now has any interest in said land. That he purchased said interest on the recommendation of Mrs. Kate H. Dyer, now deceased. That as to the other shareholders, he has no special knowledge. That he paid in money the full face value of his Certificate in good faith innocently, without notice of the claim or right of claim of any person adverse thereto.

Fifth. The defendant Charles W. Stevens objects to the cancellation of the deed which sets forth the respective interests of himself and other shareholders as unnecessary and an attempt to deprive them of their rights. As to the defendants Lyman D. Landon and Susan V. Kimberly, he has no knowledge, except that supplied by Thomas G. Hensey. As to the prayers contained in the said Bill to set aside his one-tenth interest of record, on the ground of fraud, ought to be denied, whatever process may be required to reach the Henseys and their equity in the same, if any, ought not to be in prejudice of his rights, and that a forced sale of the land by taking it out of the hands of the present fee owners and putting it in the hands of a trustee under the Court, for the purpose of a forced sale would be a disadvantage to him and the other fee owners. That he is informed and believes that the sale of this land by Thomas G. Hensey was stopped by a Bill in Equity 25840 which he is informed and believes was dismissed after the institution of this suit. The defendant prays: that this bill be dismissed with his costs and such

32 other relief as may seem necessary and just with a reasonable attorney's fee.

CHARLES W. STEVENS, *Defendant*.

E. H. THOMAS, *Solicitor*.

STATE OF NEW HAMPSHIRE,
County of Hillsboro, To wit:

I, Charles W. Stevens, on oath say I have read the foregoing answer by me subscribed and know the contents thereof and that the matters therein stated of my own knowledge are true, and that the matters therein stated on information and belief, I believe to be true.

CHARLES W. STEVENS.

Subscribed and sworn to before me, this 2d day of August A. D. 1906.

[SEAL.] FREDERIC D. RUNNELLS,
Notary Public.

33 *Answer of Susan V. Kimberly.*

Filed August 6, 1906.

In the Supreme Court of the District of Columbia, Holding an Equity Court for Said District.

Equity. No. 26396.

CHARLES H. MERILLAT, MASON N. RICHARDSON, Trustees, Com-
 plainants,
 vs.

MELVILLE D. HENSEY, LYMAN D. LANDON, HELEN M. SOULE,
 Annie Holmes, Charles W. Stevens, Susie V. Kimberly, Leonard
 H. Dyer, Thomas G. Hensey, Defendants.

First. The defendant has no knowledge of the citizenship of complainants or of Equity Cause 24084.

Second. The defendant has no knowledge of the parties who are shareholders or were shareholders in the Broad Branch Syndicate known as Dry Meadows, except that obtained from Thomas G. Hensey. The defendant denies that she is a fraudulent and pretended grantee under the deed made May 21, 1906, and says: On or about the 9th of November 1903, the defendant Thomas G. Hensey solicited from her a loan of \$2500 for three years, for which he offered to put up three shares, representing three-tenths of said land, with a collateral note, which she agreed to and which she did and paid him \$2500 in cash on that security.

34 Third. She has no knowledge or information concerning the bill and decree alluded to in said paragraph as to judgments against Thomas G. Hensey and Melville D. Hensey, or any of the other things contained in said paragraph.

Fourth. The defendant has no knowledge of the deed contained in this paragraph, excepting such as is indicated in the Declaration of Trust for three shares which she holds as security, and she neither denies nor admits the description given therein of the land, but demands strict proof thereof, but she says that on November 17, 1903,

at the time this loan was made, she got a Certificate of Title from the Columbia Title Company, showing the title good and free of all incumbrances of record in Thomas G. Hensey and Melville D. Hensey Trustees in trust for distribution to the shareholders on the faith of which she made her said loan; and she further denies the allegations set out in this paragraph that of record, according to the Title Company, that there was any lis pendens on this land and that she was in any way a party to any fraud or conspiracy for the purpose of hindering, delaying and defrauding creditors of the said Henseys or anyone else.

4½. The defendant Susan V. Kimberly further says that on the 21st day of May 1906, Thomas G. Hensey and Melville D. Hensey, Trustees conveyed to her in fee simple a three-tenths interest as a further security for the \$2500 loaned, and she denies conspiring with the defendants or co-defendants in fraud of the rights of the complainants or anyone else but that she simply holds the fee simple to said land under her collateral note secured by the three-tenths interest for \$2500 and interest and says on maturity
35 of the loan on the 9th of November, 1906 by the payment of the same with interest at five and a half per cent per annum, she is willing to surrender the same. As to the other defendants, she has no information, except Mr. Hensey's letter of May 21st, and she refers to the deed of record as to the respective interests therein described.

Fifth. The defendant further says she knows nothing about the desirability of setting aside this deed as she holds her claim aside from that under the Declarations in Trust under the previous deed of Thomas G. Hensey and Melville D. Hensey Trustees in trust.

The defendant, having answered every material allegation, prays that the Bill be dismissed with such other relief as the nature of the case may require and to equity may seem proper and just, with her costs and reasonable attorney's fee.

SUSAN V. KIMBERLY, *Defendant*.

E. H. THOMAS, *Solicitor*.

JEFFERSON COUNTY,
W. Va., *To-wit*:

I, Susan V. Kimberly, on oath say I have read the foregoing answer by me subscribed and know the contents thereof, and that the matters therein stated as of my own knowledge are true and that the matters therein stated on information and belief, I believe to be true.

SUSAN V. KIMBERLY.

36 Subscribed and sworn to before me this 2d day of August
A. D. 1906.

[SEAL.]

D. S. RENTCH,
Notary Public, Jefferson County, West Va.

Answer of Helen M. Soule.

Filed August 14, 1906.

In the Supreme Court of the District of Columbia.

Equity Docket, 26396.

In the matter of the suit of Charles H. Merillat et al., complainants, against Melville D. Hensey, et al., defendants, Helen M. Soule answers as follows:

That she is a resident of the District of Columbia; that she is the lawful owner of an undivided one-tenth interest in a certain tract or parcel of land, known as "Dry Meadows;" that she purchased said land from Thomas G. Hensey, and paid him therefor the sum of fourteen hundred dollars (\$1,400) cash; that the said Hensey has not now nor never has had any interest whatever in her portion of said tract.

Signed on this 13th day of August, 1906.

HELEN M. SOULÉ.

37

Answer of Lyman D. Landon.

Filed August 31, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 26396.

CHARLES H. MERILLAT et al., Complainants,

vs.

MELVILLE D. HENSEY et al., Defendants.

To the Supreme Court of the District of Columbia:

This defendant now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

1. This defendant does not admit the right or the authority of the Complainants to bring this suit as trustees or otherwise against him.

2. This defendant, except as to his own citizenship and residence, admits none of the matters set forth in the 2nd paragraph of said bill, nor any of the conclusions drawn by the pleader therein. On the contrary this defendant denies all the alleged pretenses and secret trusts set forth therein, and denies that as against him that either of the said Henseys have any interest in the property men-

tioned which is subject to the payment of the alleged judgment or decree. The interest of this defendant in said syndicate is hereinafter in this answer set forth.

3. This defendant does not admit the allegations of the 3rd paragraph of said bill. This defendant says that he was not a party to the said equity suit and denies that he is bound by the decree if any therein rendered.

4. This defendant says that long prior to the 24th day of August 1903, he purchased bona fide for full value of the defendant Thomas G. Hensey one share in the said syndicate and paid him \$1200 therefor and shortly thereafter and long prior to the 24th day of August 1903, he loaned in good faith to said Hensey the sum of \$1600 on two shares in the same syndicate which shares were pledged by said Hensey to this defendant in a collateral note which he still holds; that when this defendant purchased said share and loaned said money on said two shares to said Hensey he was informed and believed that said Hensey owned the said shares and he had no knowledge or notice of any equity against said Hensey which would thereafter directly or indirectly or remotely or otherwise, affect the said transactions; that there was no fraudulent intent therein on the part of this defendant in making the same nor any notice or knowledge of any fraudulent intent therein on the part of said Hensey. This defendant does not know whether the deed to the said defendant Melville D. Hensey and Thomas G. Hensey is correctly set forth in said Bill or not, and he refers for certainty as to its contents to the original deed or the record thereof.

This defendant does not admit that the decree mentioned can operate retroactively and thereby disturb in any manner his rights thereunder if the said decree be valid; and he is advised that said decree only took effect if at all on the date it was passed. On information and belief this defendant says that the defendant Melville D. Hensey never owned any shares in the said syndicate, and that subsequent to the formation thereof the said Melville D. Hensey became a trustee in the place of John H. Soule as will appear from the records in the office of the Records- of Deeds. This defendant particularly denies the fraud and fraudulent purpose attributed to him in said paragraph and elsewhere in said bill.

4½ & 5. This defendant says that the said deed mentioned as recorded on the 21st day of May 1906 was filed, so he is informed and believes, by the advice of reputable counsel, and it was designed to give record notice of the interests of the holders, of the said syndicate shares in the said real estate. This defendant claims his said interest in said real estate as owner of one share and pledgor as to two shares; and again denies any fraud or fraudulent intent as to the same.

And having fully answered said bill he prays that the same may be dismissed as to him with his costs.

LYMAN D. LANDON.

E. H. THOMAS.

DISTRICT OF COLUMBIA, ss:

Lyman D. Landon being duly sworn deposes and says that he has read the above answer by him subscribed and knows the contents thereof; that the matters and things therein stated on his
40 personal knowledge are true and the matters and things therein stated on information and belief he believes to be true.

LYMAN D. LANDON.

Subscribed and sworn to before me this Thirtieth (30th) day of August 1906.

[SEAL.]

W. CLARENCE DUVALL,
Notary Public.

Answer of Leonard H. Dyer.

Filed November 15, 1906.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

In Equity. No. 26,396.

CHARLES H. MERILLAT and MASON N. RICHARDSON, Trustees, Complainants,

vs.

MELVILLE D. HENSEY, LYMAN D. LANDON, HELEN M. SOULE, Annie Holmes, Charles W. Stevens, Susie V. Kimberly, Leonard H. Dyer, and Thomas G. Hensey, Defendants.

This defendant, now and at all times hereafter saving and reserving unto himself any and all benefits and advantages of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainants' bill of complaint contained, answering thereto, or to so much and to
41 such parts thereof as he is advised it is material to make answer unto, says:

I. This defendant has no knowledge save that afforded by the complainants' bill of complaint, as to the citizenship of the said complainants, or either of them, nor has this defendant any information, save as aforesaid, as to the allegation in the said bill of complaint that they are complainants in this suit by virtue of a decree of the Supreme Court of the District of Columbia, in Equity, Cause No. 24,085, or to enforce the provisions thereof, and therefore this defendant denies the same and leaves the complainants to make such proof thereof as they may be advised is material and necessary.

II. This defendant admits that he is a citizen of the United States, but denies that he is a resident of the City of New York, State of New York, as alleged in said bill. This defendant further alleges that he has no information as to the citizenship of the other defendants in said bill named, nor has he any knowledge as to the interest of the

defendants Lyman D. Landon and Susie V. Kimberly in said bill mentioned.

III. The defendant has no information, save that afforded by the bill of complaint respecting the decree alluded to in the third paragraph of the bill of complaint, and leaves the complainants to make such proof thereof as they are advised may be material or necessary.

42 IV. The defendant has no information save that afforded by the bill of complaint respecting the alleged debt in the fourth paragraph of such bill and therefore denies the same and leaves the complainants to make such proof thereof as they may be advised is material or necessary.

V. This defendant alleges that his mother, Kate H. Dyer, now deceased, purchased a share of stock from Thomas G. Hensey, in or about the year 1891; that the interest of the said Kate H. Dyer, by virtue of such purchase, was a one-tenth interest; that the said interest was purchased at the price at which it was then offered, and under the terms of said offer; that such stock and interest were fully paid for by the said Kate H. Dyer, and that the proportionate share of the taxes arising by virtue of said interest, has been fully paid from time to time by the said Kate H. Dyer, and since her decease, by this defendant. This defendant further alleges that the said Kate H. Dyer, his mother, died on the 26th day of February 1902, leaving a Last Will and Testament providing that after the payment of certain legacies to her three daughters, sisters of this defendant, the residue of the estate of the said Kate H. Dyer, was to be divided equally between this defendant and this defendant's brother Frank L. Dyer, of Montclair, Essex County, New Jersey, and that by this Last Will and Testament, the defendant and his brother, the said Frank L. Dyer, were appointed joint executors thereof, and that by a waiver, in writing, the said Frank L. Dyer withdrew as such executor in favor of this defendant, leaving the sole execution of the said Last Will and Testament to this defendant.

43 VI. This defendant alleges that the interest in the property which he now holds is so held by him jointly for himself and for his brother, the Frank L. Dyer mentioned in the preceding paragraph, the interest of the said Frank L. Dyer being held by this defendant as trustee.

VII. This defendant admits receiving information from Thomas G. Hensey, on or about the 21st day of May, 1906, that the shareholders in interest and some others holding his shares as security for money borrowed by him, held the property by deed according to the interests described in this bill of complaint.

VIII. This defendant objects to this method of selling this land, and says that in his opinion, a forced sale would be injurious to himself and other shareholders.

This defendant further says that the deed should not be set aside, as the same has disclosed of record the respective interests, and no advantage can be had by setting aside the said deed. If the shares belonging, as alleged, to Thomas G. Hensey, and now held by Lyman D. Landon and Susie V. Kimberly, are held in fraud of com-

plainants' rights, they should be looked to solely and not innocent third parties.

As to the second prayer of the bill of complaint, this defendant can see no good reason why these Trustees should be called in to do what the former trustees were withheld from doing by Equity No. 25,840, and now that the shareholders hold their respective interests by deed of record, they should not be disturbed.

This defendant, further answering, prays that he should have the same benefit and advantage that he would have had if he had demurred to the said bill, or to such parts thereof to which a demurrer would have been proper, or if he had made and filed a plea
44 to said bill, or to such part or portion thereof as to which it would have been proper to file a plea.

This defendant, further answering all the matters and things in the said bill of complaint contained, which are not hereto and hereby well and truly answered, traversed or otherwise denied, avers that the same are untrue.

And having thus fully made answer to the said bill this defendant prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

LEONARD H. DYER.

STATE AND COUNTY OF NEW YORK,

City of New York, ss:

On this 14th day of November, 1906, before me personally appeared Leonard H. Dyer, and made oath that he is one of the defendants herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated to be alleged upon information and belief, and as to those matters, he believes it to be true.

LEONARD H. DYER.

Subscribed and sworn to before me this 14th day of November, 1906.

[SEAL.]

JNO. ROB'T TAYLOR,
Notary Public.

45 *Memorandum.*

Replications to foregoing answer, filed.

Suggestion of Death of Thomas G. Hensey.

Filed May 6, 1907.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

Equity. No. 26396.

MERILLAT et al.

vs.

THOMAS G. HENSEY et al.

And now, come the complainants and suggest the death of the defendant Thomas G. Hensey, and say that his sole devisee and

residuary legatee is Ruth B. Hensey, and his Adm'r e t a is Daniel B. Weeden.

CHARLES H. MERILLAT,
MASON N. RICHARDSON,
Solicitors for Complainants.

46

Testimony on Behalf of Complainants.

Filed Oct. 27, 1908.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

Equity. No. 26,396.

CHAS. H. MERILLAT et al.

vs.

MELVILLE D. HENSEY et al.

Pursuant to request of counsel I hereby give notice that the complainants in the above entitled cause will proceed to take testimony in support of the allegations contained in their bill of complaint before me on Friday, April 26th, 1907, at three (3) o'clock P. M., in the law offices of Mason N. Richardson, Esq., Fendall Building, Washington, D. C.

You are invited to be present and take such action as you may be advised.

EDWIN L. WILSON, *Examiner.*

To E. H. Thomas, Esq., Leonard H. Dyer, Esq., Attorneys for
certain def'ts.

Melville Hensey, Esq., and Annie Holmes, Defendants.

Copy of above notice served on defendants this 23rd day of April,
1907.

EDWIN L. WILSON, *Examiner.*

47 WASHINGTON, D. C., April 26th, 1907—At 3 o'clock P. M.

Met pursuant to notice hereto attached at the law offices of Mason N. Richardson, Esq., Fendall Building, for the purpose of taking testimony for and on behalf of the complainants.

Present: Messrs. M. N. Richardson and Chas. H. Merillat for the complainants; Mr. William Henry White for the defendants Landon, Holmes, Kimberly & Dyer; Examiner.

Pursuant to request of counsel for the defendants this session was adjourned until Wednesday May 1st, 1907, to meet at three o'clock at the same place.

WASHINGTON, D. C., May 1st, 1907—At 3 o'clock P. M.

Met pursuant to adjournment next hereinbefore noted at the same place for the purpose of taking testimony on behalf of the complainants.

Present: Messrs. M. N. Richardson and Chas. H. Merillat for the complainants; William Henry White for certain defendants, Landon, Holmes, Kimberly & Dyer; Examiner and witness.

J. ARTHUR LYNHAM, produced as a witness for the complainants, and being duly sworn, testified as follows:

By Mr. MERILLAT:

Q. Mr. Lynham, will you please state your residence,
48 occupation and what, if anything you had to do with the taking of the testimony of Lyman D. Landon and Thomas G. Hensey in equity cause number 24,084? A. Yes, sir. My residence is in Cleveland Park, and my office is in the Columbian Building. I am a member of the bar and Examiner-in-Chancery of the Supreme Court of the District of Columbia, and as such I took the testimony on behalf of the defendants in the case of Richardson, et al. vs. Hensey and others, equity number 24,084.

Q. Did you make an accurate transcript of the testimony as given by them and file the same in the cause? Did you make, or cause to be made, an accurate transcript of the testimony as given by them and file the same in the Supreme Court of the District of Columbia with the approval of those persons? A. I did. The testimony was taken in shorthand and properly and correctly transcribed from the shorthand notes and was filed in the clerk's office of the Supreme Court of the District of Columbia.

Q. By whom were you employed to take that testimony? A. I was employed by Mr. Andrew B. Duvall, now deceased, who represented Mr. Thomas G. Hensey, and with the approbation of Mr. Edward H. Thomas who represented, as I recollect, Melville D. Hensey.

Q. Now, please state whether or not the books of testimony marked
49 one, two, three, four, five and six in equity cause No. 24,084 represent the testimony taken by you? A. They do.

NOTE.—It is agreed and understood between counsel that the original stenographic notes need not be produced.

— — —, *Examiner.*

Mr. MERILLAT: We now desire to offer in evidence from the record referred to by the witness, beginning with page 311, such parts of the testimony of Lyman D. Landon and Thomas G. Hensey as bear on the property in litigation in the pending cause, the pages to be designated to the Examiner, and all that relates to this pending matter to be read to him from the original record and to be copied from the original record filed in equity cause number 24,084, the record referred to being included in books from one to six inclusive heretofore referred to by the witness.

Mr. WHITE: I object to this as not being the proper way to prove the testimony of this witness and in making this objection I agree that the typewritten pages offered are the same, or rather are to be considered the same as if the stenographic notes had been offered.

Attention is called to the fact that none of this alleged testimony is signed by the said Lyman D. Landon or Thomas G. Hensey.

Cross-examination.

By Mr. WHITE:

Q. Did either Mr. Hensey or Mr. Landon sign any of this testimony? A. Do you mean their respective depositions?

Q. Yes, sir. A. I have no independent recollection of that. I know this, however, that Mr. Hensey with a great deal of care and scrupulousness went over it and read it all over so far as I recollect.

50 Mr. WHITE: I ask that all the answer be stricken out as not being responsive.

Q. Look at the records now and see, after refreshing your memory, and answer the question if you can? A. The depositions respectively of the two gentlemen you mentioned were not signed by them.

Signature of the witness is waived by counsel.

EDWIN L. WILSON, *Examiner*.

Mr. MERILLAT: Counsel for the complainants now reads from the record the following excerpts, stating so far as he can observe all of the testimony that relates to or bears on the property now in litigation.

Mr. WHITE: Counsel for certain defendants reserves the right to **further object** to any and all parts of said testimony after he has been given an opportunity to inspect the same.

Hereupon counsel for the complainants read from the evidence of Lyman D. Landon given in equity cause number 24,084 as follows; beginning at page 311; which testimony was given on the 11th day of April, 1904:

(Direct examination by Mr. DUVALL:) * * *

Q. Do you know the defendant, Thomas G. Hensey? A. Yes, sir.

Q. How long have you known him? A. I have known him nearly thirty years—twenty-six or twenty-seven years.

51 Q. In an amendment to the complainant's bill in this cause, filed December 23, 1903, it is alleged that the defendant Thomas G. Hensey conveyed in fee simple to you five houses on Westminster Street. State, if you please, the history of the transaction. A. He never conveyed five houses to me there at all. I held a note against Mrs. Dodge, and she conveyed two of them. That was given to me in October, 1901, and she deeded those houses, three of them, to me and I turned the note over to her.

Q. What were the lots; do you remember? A. I do not.

Q. (Continuing:) Or describe the properties. A. Well, I cannot describe the lots, because I do not remember the number of them. One is on Tenth street, two on Westminster Street—950 and 952 Westminster Street.

Q. What was the amount of the indebtedness due you and
(Page 312:)

how was it represented? A. \$5,250.

Q. How was it represented? A. In that note; by a note. I think the note was dated the 17th of October, 1901. It was 1901, in October, and I think the date given is correct.

Q. What became of the note when the property was given to you?
A. It was turned over to Mrs. Dodge.

Q. Give the history of that note. A. That note at the time—
I had a settlement with Mr. Hensey at that time, and that
52 note was turned over to me. It seemed that he had some of
Mrs. Dodge at the same time that Mr. Hensey owed me that
amount; and I took that note and she took the deed of the houses,
of all the houses, and I was to have the deed of three of them when-
ever she chose to transfer them, or whenever some other arrange-
ment was made.

Q. How was it that you had the note of Thomas G. Hensey for \$5,250? What did that represent? A. It represented money that I had loaned him, and she took it up.

Q. When had you loaned him that money? A. Why, I had loaned him—well, I could not state that specific sum, because I had loaned him money at different times.

Q. Extending back what length of time? A. Well, I presume eighteen years; perhaps more.

Q. And in a settlement of the account, the amount due was \$5,250, for which he gave you Mrs. Dodge's note?

(From page 313:)

A. Yes, sir.

Q. And that note was surrendered? A. When the deed was passed to me.

Q. When these three houses were conveyed to you? A. Yes, sir.

* * * * *

Cross-examination (beginning at page 323).

By Mr. MERILLAT:

* * * * *

53 Q. Through how long a period of time had you business relations with Thomas G. Hensey?

(From page 324:)

A. How long have I?

Q. Yes, sir. A. Oh, about twenty years.

Q. How often did you have settlements with him? A. Not very often. They ran along; I ran in whenever I had something, money to loan for somebody else, myself or somebody else.

Q. Were these loans usually secured by deed of trust, or otherwise? A. They were usually secured by a deed of trust.

Q. What security had you for this \$5,250 you say was due you?
A. I had no security.

Q. How long a period of time had that been running over? A. Well, it was put in, the money was put in and drawn out at different times. It was the balance.

Q. When had you last had a settlement prior to that one? A. I could not tell you.

Q. Approximately? A. Well, I would not dare say; I have no idea.

* * * * *

Cross-examination continued from page 325, etc.):

Q. Now about this \$5,250: Were there any notes or anything given you by Mr. Hensey to represent that indebtedness?

54 A. No, sir—well, only a part of it; only a part of it.

Q. How much of it? A. Some of it—as I say, it was put in there at different times, and some of it was later, away late; and that was the settlement that we had at that time.

Q. Well, what evidences did you have prior to that settlement of the loans that you had made him? A. Only receipts, memorandums.

Q. What application, if you know, was made of the money that you loaned? A. I do not know.

Q. Was there any understanding between you as to what should be done with it? A. I usually used to ask him to use his own judgment about using it and get the most out of it for me that he could. That is, if he loaned it on real estate, why, of course, I expected to get security; if he loaned it in other ways I expected that he would loan it where it would be safe and get me interest. Sometime before that there were two or three loans made, and he gave me some of the commission that he got.

Q. Were there any deeds of trust standing in your name? A. No, sir.

Q. At the time this settlement was made? A. No, sir.

55 Q. I mean by that, was any part of your money secured by deeds of trust reciting that trust deeds had been given certain persons to secure notes for money advanced by Lyman D. Landon? A. No, sir. I had sometimes taken notes, deeds of trust, which had been given to some other party, and the parties owning them wanted to sell them, wanted the money on them, and I gave them the money on them two or three times in that way; but my name was not in the deed of trust at all. I just bought somebody else's deed of trust.

Q. Had you any such deeds of trust at the time of this settlement? A. No; I do not think I did have.

Q. Well, you must have knowledge. A. I had none unless it was for a Mrs. Thomas; and I forget whether that was paid after that or just before that, but it was paid about that time.

Q. What was Mrs. Thomas's full name? A. Mrs. Mary Sawyer Thomas.

Q. Where was the property located? A. I think it was located on N street. I think it was somewhere near New Jersey Avenue on N street. I think that was where it was. It was up that vicinity somewhere.

Q. Who were the trustees? A. That I do not remember. I do not remember who the trustees were. You see, it was not given to me for her—not that one. I bought it at \$2000.

Q. She made the original loan on that account to Mrs. Thomas?

56 A. I do not know. I kept none of the papers and do not remember. I have no memorandum of it.

Q. Who did keep the papers? A. Well, I had the papers during that time when they had the money; but when it was paid the papers were turned over to somebody else.

Q. Well, did you not look at and examine that deed of trust to see who it was, whose paper you were taking? A. Oh, yes; certainly I did.

Q. What was the name of the person? A. I do not know.

Q. You have not any recollection? A. No; I have no recollection of the person. It was two or three years ago. It kind of seems to me now, though, since you speak about it, that the name of the party giving the deed of trust was Briggs; but I am not quite certain about that.

Q. Through whom was that loan made? A. I do not remember.

Q. And to whom were the papers given? You say the papers were given to someone afterwards. A. I gave them to the parties taking the loan. Somebody else took the loan at a less rate of interest, I think.

Q. And who was that person to whom the papers were surrendered? A. I do not know who that was. It did not come through me. It came through Mr. Hensey, and he made the loan and returned the papers to whoever made a new loan on it.

57 Q. As I understand this transaction, then, a loan of \$2000 had been made on a piece of property situated, you think, on N street? A. I think so.

Q. By a lady named Thomas? A. Named Thomas.

Q. And that subsequently— A. (Interrupting:) It was not loaned to her first. She had not the first loan. The parties giving the loan, as I understand it, wanted their money, and it was there for sale. It was Mr. Hensey's to be sold or to get the money of somebody else; and I gave her \$2000 of her money and took this loan, and when it was paid to me, why, I returned it to Mr. Hensey. What he did with them I do not know. Of course, I expect he turned them back; that is what he said he was going to do, to whoever gave the other loan. I think he told me that he got another loan for five per cent.

Q. Well, who was the borrower, and whose names appeared on the note? A. I do not know who it was.

Q. Did you see the promissory notes that were given and were secured by this deed of trust? A. Yes, sir; because every six months the interest was paid to me and endorsed on the back of those notes.

Q. How was it paid to you? A. It was paid to me through Mr. Hensey.

Q. By whose check? A. It was paid in money; it was not paid by check.

Q. Well, as you were the holder of the note, can you not
58 remember whose note you held? A. I do not remember.
I just had it in money and put it there and put it back again
in the safe deposit box where I had put it.

Q. Did you make a memorandum at the time? A. Oh, a memorandum was made, but I had not made a memorandum of the amount that was paid to me for her. I did not take the name of the one paying it to me, because I sent her a check or a draft right away. She did not live here.

Q. Where does she live? A. She lives in Maine. When she first commenced loaning money here she lived here. She was from the same place that I am or formerly was from, and we have always known each other. Her name at that time was Foote, Mrs. Doctor Foote, and after some years she married here again and went to Maine to live. She lives in Maine now.

Q. Now, as I understand this transaction, then, you represented a lady, Mrs. Foote? A. Mrs. Foote.

Q. And loaned for her \$2000? A. I did.

Q. On real estate security? A. Yes, sir.

Q. Through Mr. Hensey? A. Yes, sir.

Q. Now, who were the trustees on that deed of trust? A. I could not tell you.

59 Q. Was Thomas G. Hensey one? A. No, he was not. I think not; I am quite sure he was not.

Q. Did you have the deed of trust papers? A. I did.

Q. And kept them in your possession? A. Yes, sir.

Q. And were responsible to Mrs. Foote? A. To Mrs. Foote.

Q. For this money that you were loaning for her? A. I was loaning it for her; I was doing that as an agent for her. That is what I was doing it for.

Q. And who was the person in question to whom you loaned the money for her? A. I do not know.

Q. You had the papers, had you not? A. I had the papers, but I do not remember; I did not keep any memorandum of it. I have not the name of one of them.

Q. Was that transaction entered on the books of Thomas G. Hensey & Company? A. I do not know whether it was or not; I have no knowledge on that point. I got my money for it; it was paid to me and endorsed on the note, and that was all I cared about it.

Q. And whose note it was you do not even know? A. I do not know; no.

Q. And subsequently Mrs. Foote wanted her money, and you took up the loan, paid her the \$2000, and yourself assumed the
60 loan? Is that correct? A. No; no.

Mr. THOMAS: He did not state anything of the kind.

The WITNESS: I did not say anything of that kind. I said that somebody else paid the note; I do not know who paid it.

Mr. THOMAS: He said the party got the loan at a less rate of interest, and the note was taken up.

By Mr. MERILLAT:

Q. The note was taken up and paid? A. Paid; paid me for her.

Q. Well, did that figure at all in this \$5200 settlement? A. Oh, no; it did not appear in that.

Mr. THOMAS: He stated that when you first commenced to examine him—that it did not appear.

Mr. MERILLAT: I beg counsel's pardon; the witness stated that he did not know whether it was just before or just after this settlement.

Mr. THOMAS: Well, he said he had another loan for another party, and he did not know whether that was just before or just after, but he did not refer to this \$5200 at all.

By Mr. MERILLAT:

Q. Well, at the time this \$5200 settlement was made, had you, either for yourself or others, or had Mr. Hensey as your agent, any deeds of trust or other security representing this \$5200 due to you?

Mr. THOMAS: I object to that question because it is too complicated; it is not a question.

61 (The pending question was read aloud by the Examiner.)

A. I do not remember that he had. I think that was the last one that I had.

By Mr. MERILLAT:

Q. Well, as I understand it, then, this \$5250 was absolutely unsecured so far as you were concerned? A. Part of it was, anyway—I do not know; a little of it, the last that I let him have; I could not say how much.

Q. Had you notes from him for any part of it? A. Why, I had receipts from him and papers showing that he had it.

Q. Had you any papers showing what application had been made of it? A. No, sir; no, sir; I had not.

Q. Was it not your custom to require that there be some security behind this money that you were advancing or loaning through Mr. Hensey? A. Why, not always with him, because I was doing business occasionally with him in that way. If I wanted money I could get it; if I had money to loan I could loan it, although I did not have very much to loan—only a little; and I was loaning money for others, money that belonged to others, in just the same way. That is all the connection that I ever had with him.

Q. Did this \$5200 include any moneys that you were lending for others, or was it all your own money? A. That was all my own.

Q. Had you a note or notes of Thomas G. Hensey for any part of it? A. No; I did not have note. I had receipts and memorandums of it until some other arrangement was made.

Q. What do you mean by saying, "until some other arrangement was made"? A. Well, until I called for it or deposited more with him to loan. He took money to loan for me, and I very seldom—I do not know that I ever asked for a note. Of course, it would only be there for a little time as a loan for me or to use it in some way.

Q. For how long a period had he any part of this \$5250? A.

Well, for a good while; I do not know how long. He had had money more or less. Sometimes I could get it when I wanted it, and when I wanted to loan some more I would put it in there or let him go and use it wherever he saw fit to, or wherever he had a good chance.

Q. Was it your understanding with him that he would take security for the money that he loaned of yours? A. Yes, sir; yes, sir. That was always understood.

Q. That he, Thomas G. Hensey, would take some security? A. Take some security for me.

Q. For you; and did he, Thomas G. Hensey, hold that security?

A. Very seldom.

63 Q. Who did? A. I do not know that he ever did. I think he gave it to me, that which was for me and for other parties. I do not think he ever held any of it any time. He gave it to me as soon as the arrangement was made and the papers were made.

Q. So that, as I understand it, Thomas G. Hensey loaned your money and always took some security? A. Always.

Q. From the persons to whom he loaned it? A. I think he did, always, unless it was for a short time, some of it, and not took security. I do not remember just how that was.

Q. And that security, after it was taken, he would turn over to you? Is that correct? A. When it was paid I returned it to him.

Q. You returned the security? A. To him.

Q. Now, what security had you, then, for this \$5250 which you say you had loaned him? A. I had no security; I had only these receipts. I do not think I had any for any part of it. I might have had for part of it at the time, but I am not sure. Whatever papers there were I turned over to him at the time that note was given.

Q. What were those papers? A. Well, I do not remember now.

Q. What became of them? A. I gave them to Mr. Hensey.

64 Q. Have you any memorandum of them? A. I had no memorandum of them. I destroyed everything then. I had gotten through.

Q. What was the nature of the security? A. Well, what security I had at any other time was deeds of trust.

Q. So that the papers that you surrendered to him when you took this \$5200 note in settlement were deed of trust securities? A. The only securities I ever had from him. I did not have securities for it all.

Q. For how much of that \$5200 had you security? A. I could not tell you.

Q. Have you any memorandum of any sort that would show it? A. No; I have no memorandum.

Q. Was it not your practice to take memoranda? A. After I held papers about a certain time, when any transaction like that happened, I would destroy the papers, because any person living in a trunk cannot carry papers always. I would just get rid of them.

Q. Have you a safe deposit box? A. No, sir.

Q. Where was the property located represented by these deeds of

trust that you had for this \$5200, in all or in part? A. I could not tell if I had any for that. It seems to me that I had some for a part, but I am not certain. If I did not, I just had receipts from
65 him or memorandums of it, and then we settled it all up, settled everything up. I did not always ask him for a deed of trust or security when we were doing business back and forth in that way, where I was loaning him money.

Q. You stated, in answer to a previous question, that he always, or at any rate almost always, gave you some security for the money that he loaned. A. He always did for that I loaned for others, but not always for myself.

Q. How frequently did he give you security for that which he had loaned for you? A. Not often.

Q. Had you an account at Thomas G. Hensey's, on the books, so far as you know? A. Not that I know of.

Q. Well, if Thomas G. Hensey died what evidence would you have had that there was money due you from him? A. Well, I would not have any evidence unless he had it on the book. Of course I had a memorandum at that time of everything I had let him have; but just for myself I would have no papers from him if I did not have the security; but I always kept a memorandum myself.

Q. And that memorandum has been destroyed? A. Yes, sir. At the time when we settled it, when we made a settlement I turned the papers all over to him and destroyed what did not amount to anything.

Q. Have you had any dealings with him since that settlement in 1901? A. Only a little rent matter.

66 Q. He has not loaned any money, or anything of that sort?

A. No, sir; not to myself or to anybody else since that time.

Q. What, if any, reason was there for that severance of your business relations? A. No particular reason that I know of. He never has asked me for any, and I never—in fact, I have been dealing some in some other ways, and did not have the money to loan.

Q. And you cannot remember how much security you had for any part of this loan at the time or prior to the settlement? A. Prior to the settlement? No; I cannot tell.

Q. Can you tell approximately? A. No; I cannot.

Q. Did you have security for \$3000 of that \$5250? A. No; I did not have security for half of it.

Q. Well, if you are unable to give any reason at all, how do you know you did not have security for half of it? A. Well, I know well enough for that. I am only guessing at that.

Q. And can you describe that security at all? A. No, sir.

Q. When did you take these houses that were given you and, you state, were given in settlement of this loan transaction, or on account of it? A. That he deeded to me?

67 Q. The deeds to the Westminster Street houses? A. Well, I should have to look that up. I cannot tell you now.

Q. Well, when this \$5200 settlement was effected between you,

in what shape was your security placed? What security did you get for it? A. The \$5200?

Q. Yes, sir. A. I just took Mrs. Dodge's note; I knew it was good, all right.

Q. Secured on anything? A. No, sir.

Q. Was there any understanding as to how the note was to be paid? A. Only that I was to have my interest in this house.

Q. In what form was that agreement put—in writing? A. No, sir.

Q. What knowledge did you have that she was the owner of those houses on Westminster Street? A. There was that settlement; there was that money that he turned over to her that they told me about, that I was told of. She had let him have so much money, and took the deed of all those houses, and mine was included in it—my \$5250, and I was to have it.

Q. Had you seen that deed at that time? A. No; I had not seen it.

Q. Did you have personal knowledge that there was such a deed from Thomas G. Hensey to Mary Dodge? A. I took their
68 word for it.

Q. Did Mrs. Dodge tell you she held a deed from him? A. Mrs. Dodge told me she had the deed.

Q. Was it of record? A. I do not know.

Q. She is his step-daughter, I believe? A. His step-daughter; yes.

Q. Do you know when that deed from Mr. Hensey to her was recorded? A. I do not.

Q. Do you not know, as a matter of fact, that it was recorded after the institution of this suit? A. I do not know; I heard that it was. That is all that I know about it.

Q. Was the deed from her to you recorded at the same time? A. I do not think it was. *I do not think it was.*

Q. When was your deed delivered to you? A. I have no remembrance; I cannot tell when it was delivered to me.

Q. Was it after the institution of this suit? A. Yes, sir.

Q. Were you aware of the institution of this suit against Thomas G. Hensey? A. I did not know much about it; in fact, I did not know anything about it.

Q. Were you aware there had been a suit instituted against
69 him? A. Yes. Yes; I was.

Q. Did you have any talk with Thomas G. Hensey shortly prior to the recording of your deed? A. I do not remember that I had for some time before that.

Q. Your deed was recorded on a Monday, was it not? A. I could not state; I have no idea what day it was, what day of the month or day of the week.

Q. Was there any conference between you as to whether or not you should take such a deed, or a deed should be made out to you? A. Between whom?

Q. That a deed should be made out conveying three of these

houses to you? A. That was the understanding when I received the note.

Q. Who was present at the time that deed was executed from Mary Dodge to you, conveying to you three houses? A. I do not know. Who were present with me? I was not there when the deed was executed. The deed was not executed before me.

Q. How did you get the deed? A. It was sent to me.

Q. Had it then been recorded, or not, when it was sent to you? A. I am not certain about that; but it seems to me that it had, but I am not certain.

Q. Did you record it? A. No, sir.

70 Q. What did you do with it after the deed was sent to you?

A. I do not remember how I sent it down there. I did not take it down there, I know, to the recorder's office; but I do not remember just how it was—who took it down there.

Q. Well, what did you do with it? How did it get out of your possession after it was sent to you? A. Do you mean before it went to the Recorder's?

Q. After it was sent to you what did you do with it? A. I have got it home.

Q. No; after it was sent to you the first time, what did you then do with the deed? A. Well, I had it sent to the recorder's office some way.

Q. By whom? A. I do not know who did take it.

Q. Have you no recollection to whom you delivered the deed after it was sent to you? A. No; I do not know that I sent it. I do not know that I sent it, there were so many, but I presume I did. I did not take it. I am not sure but I did, too. I know that I was down at the Recorder's office. I know I was down there once or twice. I am not sure but that I did, too; but it has gone from me now whether I took it or whether somebody else took it.

Q. It is a very recent transaction, is it not, Mr. Landon?

71 A. Oh, no—no; it is not very recent.

Q. I mean, the recording of this deed? A. Why, I think it was last fall or last summer.

Q. And you cannot recall just how that deed got to the recorder's office? A. The more I think of it, I think perhaps I took it there one of the times that I went down there; but I am not quite certain.

Q. Did you also take a deed from Thomas G. Hensey to Mrs. Dodge? A. I did not. I did not take any deed for her.

Q. You did not? A. I did not.

Q. Were those deeds recorded at substantially the same time? A. I do not think they were.

Q. Were they recorded the same day? A. I think not. If they were, I did not know it. I do not know when hers was recorded at all. I do not know when it went there; but I doubt it. I have no reason to think so, at any rate.

Q. Were you familiar with the Westminster Street property? A. No, sir; not very familiar, until since it came into my hands.

Q. Well, were you familiar with it in 1901? A. No, sir; I was not. I never knew anything about it then.

Q. Were you acquainted with its value in 1901? A. No,
72 sir.

Q. Well, did you have knowledge in the year 1901 of what encumbrances were upon it? A. I did not.

Q. Did you have any search made to ascertain? A. Why, I had no knowledge only what they told me.

Q. What who told you? A. What they told me were the encumbrances on it.

Q. Did you go out and examine the property yourself to see what it was worth? A. I was out there two or three times.

Q. When? A. About that time.

Q. About what time? A. About the time that they were *deed* to me. I was out there a little before that.

Q. When were they deeded to you? A. I do not remember when the deed was made. It was last summer or fall sometime.

Q. Had you been out there to examine the property as much as six months before last summer? A. Oh, I had been there before that, before that time, so that I knew, in my own judgment, what it was worth. I knew the encumbrance was on it.

Q. Did you make any investigation to ascertain just how much property there was, and did you receive any report as to the encumbrance on it? A. No, sir; only they told me what the encumbrance was, and I took their word for it.

73 Q. And you took the note in complete settlement of the obligations between Thomas G. Hensey and yourself? A. Yes, sir.

Q. And you say that you had not visited the property in 1901? A. Well, about that time.

Q. And you did not investigate to see what encumbrances were upon it? A. I took their word for it; that is all.

Q. And you gave them a complete discharge of an indebtedness to you without having any other knowledge of the encumbrances upon it except their word to you? A. That is all.

Q. Who gave you that word? A. Mr. Hensey told me the amount of the deed of trust there was on it.

Q. What valuation did you put on the property, on the houses, as each severally being worth? A. Well, I did not put as much as he did, but I made up my mind that they were enough, altogether, all of them, to cover that indebtedness, that note.

Q. And the matter continued represented simply by a note from Mary B. Dodge to you until last summer? A. Yes, sir.

Q. After the institution of this suit? A. After the institution of this suit.

Q. And then that deed was recorded? A. I do not remember when it was recorded, but it was last fall or summer.

74 Q. And you did not examine, when that note was given you, to ascertain whether or not these houses were then in the name of Mary B. Dodge? A. They were transferred at the same time to her; the deed was made at the same time.

Q. The deed from Thomas G. Hensey to Mary Dodge was made

at the same time that the deed from Mary Dodge to you? Is that correct? A. Only a short time before that—a short time before.

Q. How long before? A. Well, that I have not really a recollection of now. They told me it was done at that time, just before that. They told me when it was done, and it was done before that a little—not much.

Q. Why did you not require the transfer of the houses to you at the time the settlement was effected? A. Well, I did not know but that he might dispose of them in some way before this time.

Q. Could he not dispose of them with title in you quite as well as though title were in somebody else? A. Well, he might or might not, but he might dispose of them all, altogether.

Q. What do you mean? A. All the houses—the whole lot of houses. There were several houses there together.

Q. And your reason, then, for not taking the deed direct at the time of the settlement was because you thought a blanket disposition of them all could be made better than if the title to three
75 of the houses was in you? A. Well, I did not know but what it might be and save little transfers, save some transfers.

Q. How much would you save—the cost of recording? Is that what you mean? A. No; the cost of the papers. If they were made there would have been more papers, of course.

Q. And that is your reason for not taking it? A. Well, I presume that is one reason; and I don't know but I thought that it would save some trouble, and I would just as soon have Mrs. Dodge's note for a good deal more than that.

Q. Then you were satisfied with Mrs. Dodge's note? A. Yes, sir.

Q. Whether it was secured by real estate of record or not—is that it? A. I was as well satisfied as if I had had it at that time, yes; I considered her good for a good many times that amount.

Q. How much is Mrs. Dodge worth? A. I could not tell you. But then she had had considerable money left her. I could not tell you.

Q. Over \$15,000? A. Well, I don't want to say what I think she is worth, because it is a private matter of hers. I would rather not tell you what I think, because it might not be correct.

Q. Is it your custom, Mr. Landon—you have been in business and are a man of considerable means, are you not, Mr.
76 Landon? A. Oh, not very much means.

Q. You are a man worth forty or fifty thousand dollars, are you not? A. No, sir; I am not.

Q. You have been engaged in lending money for a long time? A. Well, small amounts. I have not had a great deal of money to loan, but I have let it accumulate a little if I could.

Q. At any rate, you loaned as much as \$5000 to Thomas G. Hensey? A. I have lent him more than I did anybody else.

Q. Does that represent the largest loan you had out? A. What is that?

Q. Did the \$5200 represent the largest amount in loans that you had out? A. The largest I had out?

Q. Yes, sir. A. Yes; it did.

Q. And you did not think it essential, in making a settlement of that, that title to the property which was to secure your indebtedness should be transferred to you and should be recorded? A. Why, I did not think it was necessary just then; I did not see any necessity for it.

Q. Well, why did you think it was necessary, after the institution of this suit, that there should be such recordation made? A. Well, she proposed to do it, and so I took it—Mrs. Dodge did.

Q. Did you propose anything to her on that point? A. I did not say anything until she spoke of it herself.

Q. Did she come to see you? A. No, sir.

Q. How did it come about; when and where was the agreement made or the suggestion made of a transfer? A. Well, it was made afterwards, there at Mr. Hensey's office.

Q. When? A. Well, at that time, about the time the transfer was made, I saw her there.

* * * * *

(Cross-examination continued—beginning at page 350:)

Q. Are you interested, at this time, in any business matters in which Mr. Hensey is also interested? A. Am I?

Q. Yes, sir. A. No, sir.

Q. Are you at all interested in the Norwood Syndicate? A. Oh, in the Norwood Syndicate—yes, sir.

Q. Thomas G. Hensey is interested in that, is he not? A. Yes—well, I suppose so. He was, but I have not heard him say anything about it; he has not said anything about it to me for a long time. That comes through some other parties. I have got two shares in it which I bought at the time the syndicate was organized.

Q. Are you interested in any other business matters, syndicates, deals or real estate transactions in which he has any interest? A. Why, he has no interest—he is renting two houses for me, or renting three houses for me.

Q. Do you know what the Ten Syndicate is? Did you ever hear of a syndicate known as the Ten Syndicate? A. I never did.

Q. Are you interested in any other real estate syndicates or companies other than the Norwood? A. No, sir; I do not know what that "Ten Syndicate" is; I never heard of it before.

* * * * *

(Cross-examination continued—beginning at page 352:)

Q. How did you arrive at this amount, \$5250, as representing the amount due you? A. Well, by settlement—by its being a balance.

Q. How did you strike a balance? A. That was what there was; that was the amount, in figuring it all up—figuring up.

Q. Where did you get the figures from on which it was based? A. Mr. Hensey had the amount.

Q. Where? A. He had it figured up himself, just the figures. I took the figures, and I took the figures from him.

79 Q. Did he have any memorandum of those figures? A. Yes; he did.

Q. Where? A. He had it with him.

Q. Where was the settlement made? A. It was made at his office.

Q. Did this include interest and principal as well? A. Yes, sir.

Q. How did you reach the calculations as to the interest? A. The interest was figured at six per cent.

Q. And how did you arrive at the length of time that the interest should be figured? A. Well, some of it, the last of it, I guess there was no interest; it was only a short time before that that we did that, and the others we could arrive at the interest from the time he had had it, easy enough.

Q. Well, how did you know from what time to date it? A. Because I had—to date the note? I had the memorandum myself of the time that I gave it to him at that time.

Q. And of the several amounts that you had given him? A. Of the several amounts; yes, sir.

Q. And did he have any memorandum, likewise, of when you had given it to him—the several amounts? A. He must have had, but I never saw it.

80 Q. You never saw any memorandum? A. I never saw it. He did not show it to me every time I went there, or every memorandum that he made.

Q. Well, this time? A. He never showed me his books.

Q. This time the final settlement was made, did you go to the books to ascertain what was the correct amount? A. No, sir; I did not go to the books at all. I never went to his books.

Q. Did he? A. He had it; he took it off his books—that is, just the amount.

Q. You say he had taken it off the books? A. Yes, sir.

Q. How do you know he had taken it off the books? A. I had the memorandum myself, and they agreed.

Q. How do you know he had taken his off the books? A. Well, I suppose he had. Of course I did not see him; I could not tell as to that, but I have no doubt he had, because they agreed with mine.

Q. Do you know whether he kept a book account of his dealings with you? A. He never told me that he did. I never saw one.

Q. And in all your years of dealings you do not know anything on that score? A. No, sir; I never asked him anything about it. I suppose he did, but I never saw it. I kept my own, and as long as they tallied and agreed, that is all I cared about.

81 Q. Did you know whether or not there were any entries as to the particular notes or deeds of trust on account of which these several loans were applied? A. No, sir.

Q. You have not any knowledge on that score? A. I have not any knowledge what he had in a memorandum. You asked whether he had a memorandum of that.

Q. Whether there were any; yes. A. I do not know. I kept,

myself, a memorandum of the deeds of trust and the loans, those I had myself and others.

Q. And that memorandum that you kept would include, would it not, the date of the loan and the amount of the loan? A. Each loan?

Q. Yes; of any loan that you made? A. No, sir; the statement probably would, the balance.

Q. Well, would not your memorandum state the amount of the loan and the date of it? A. Yes; my memorandum did.

Q. And would it not also state what security you had? A. Yes; after I got the security.

Q. Whose note it was? A. Certainly.

Q. And secured on what? A. Certainly it would.

Q. And what property it was and who were the people concerned—
82 it would show that, would it not? A. Certainly. I have got some now of a colored man that I have been doing business with for a good while here, a long number of years, the same kind of business, that I have not got any memorandum of; but I have got the deeds of trust, the papers, the notes and all, and I take them right from that; and every six months I go and get my interest, or, rather, the interest for other parties.

Q. In what shape would you make your memoranda? A. I would just make memoranda of a certain deed of trust note and deed of trust given on such a date and due at such a time, the date and the interest.

Q. In what would you make that memoranda? A. Oh, a little memorandum book I had.

Q. Have you that book now? A. No, sir.

Q. Why did you destroy it? A. Well, because it had gotten full, and I destroyed it; and I have not had any since.

Q. And that memorandum book was a memorandum—— A. (Interrupting.) They were about due, and I just have not had any memorandum since.

Q. And that memorandum book—— A. (Interrupting.) Those that I have gotten since, I have not made any memorandum of, as I was telling you a little while ago.

Q. And that little memorandum book had in it entries concerning your moneys and dealings for others than yourself, had it not?

A. For others?

83 Q. Yes. A. I had one for Mr. Hensey; that was separate. No; there were some others in it, but not very many, because it was an old one when I commenced, and I just put them into that because that came handiest at the time.

Q. But that memorandum book included entries of your transactions for other people, did it not? A. Yes, sir; that is it.

Q. How many memorandum books had you? A. I have one.

Q. Will you please produce that at the next session? A. There is not anything in it. It is a new one that I have got.

Q. A new one—and you have not retained the old memorandum book that you had? A. No, sir; I have not retained them, because I had gotten through with them and did not want them any more.

Q. Notwithstanding it was your record of transactions on account of people for whose moneys you were trustee? A. Yes, sir. I had settled up everything. Everything was settled up, and I had gotten my receipts, and I did not care anything more about them, and I did not want to keep them. Have done that several times with little memorandum books.

Q. How big a book was it? A. Oh, as big as my hand.

Q. And how many of such books have you had in the
84 course of the last ten years? A. I presume I have had three or four.

Q. What was the reason for destroying them? A. No reason, only to get them out of the way.

The following are extracts from the testimony of THOMAS G. HENSEY, read by counsel for the complainants, according to the agreement heretofore entered into as noted on the record; which testimony was given on April 23rd, 1904.

Cross-examination (beginning page 702).

By Mr. MERILLAT:

* * * * *

Q. Now, who else besides Mr. Soule joined you in the purchase of the Dry Meadows tract? A. A Mrs. Dyer.

Q. Where does she live, and her first name? A. I don't remember her first name. She is dead. It went to her estate.

Q. Who else? A. Mrs. Holmes.

Q. What is her first name, and where does she live? A. I don't know her first name. I don't remember it. She lives in the city.

Q. Where? A. I don't know. I would have to hunt it up.

85 Q. Did you make calls for payments on account of taxes, interest, or any other reason, on these people? A. No. I have usually paid the taxes, which were light, until recently.

Q. Did you make a record of the payments that you made? A. Of the taxes I did, yes, sir.

Q. What about interest? Is there a mortgage on it? A. No, sir. All paid off and settled up.

Q. Who else was interested in that tract besides Mrs.— A. Mr. Stevens.

Q. What was his first name? A. I don't remember that.

Q. Where does he live? A. He is a non-resident.

Q. Who else? A. That is all I think of.

Q. Are all of these people still share-holders or interested in it? A. They are.

Q. Have you equal interests? A. They are divided into tenths.

Q. How many tenths do you hold? A. I hold five-tenths.

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(Continuing on page 706:)

86 Q. You have stated, I believe, that the entire amount was paid up on the property on the Borad Branch Road, known as the Dry Meadows. Is that correct? A. Yes.

Q. When were the mortgages paid off? A. Well, they were paid off in piece-meal.

Q. When? A. Oh, at different times.

Q. Any payments made in 1893 or 1894? A. Yes, sir, I think so.

Q. Have you a memorandum or record of those payments? A. I may.

Q. I ask you to produce all memoranda, documents, and so on, you have upon this subject of this Dry Meadows property at the next session.

* * * * *

(Cross-examination continued—page 707:)

Q. Well, before we come to that, I find in the records of the Recorder of Deed's Office a deed dated January 13th, 1893, and recorded February 28th, 1894, whereby Walter Hensey conveyed to Thomas G. Hensey and Melville D. Hensey, as joint tenants, and in trust for contributors to the purchase price thereof, this property in Dry Meadows. Was that correct? A. That was an exchange of trustees only. I think it is correct if it is on the record.

Q. Were any payments made to them about that time? A. I presume there was.

87 Q. Did Lyman D. Landon figure jointly with you in conveyances from the year 1891 to the year 1894 as far as you know? A. I think Lyman D. Landon had something to do with the Twelfth Street house. I don't remember the circumstances now, but the record shows it probably right.

* * * * *

(Cross-examination continued—page 717:)

Q. Who had managed and had control of the affairs of the Dry Meadows tract? A. Walter A. Brown, and afterwards Jordan.

Q. No, the Dry Meadows tract. A. Oh, the Dry Meadows tract. I have had the management of it. The debts were all paid off, and the taxes paid, and report made to the stockholders.

Q. Now, I will ask you whether or not from time to time there had been payments on account of taxes on these various properties that I have inquired of you about? A. There have.

Q. And whether or not there have been payments made on account of interest from time to time? A. Undoubtedly.

* * * * *

(Cross-examination continued—beginning at page 737:)

88 Q. Mr. Hensey, I would like you to please state from these deeds which I now hand you, the history as shown by the deeds of the acquisition by you of an interest in the tract of land known as a part of Dry Meadows, described in the amended bill of complaint? A. Well, this bill speaks for itself. It is a deed in fee from Sophia Jones and others, to Melville D. Hensey.

Q. Oh, pardon me. What I wanted read at that point was Sophia Jones and certain others who are named, instead of others. A. This

is dated on the 12th of February, 1891, Sophia Jones, widow, Horace S. Jones and Fannie B. Jones, his wife, and Mary Virginia Jones, unmarried, to Melville D. Hensey. Is that as far as you want me to go?

Q. Is that the last signature in that deed and is that land described in that deed the same land in the amended bill of complaint in this cause? A. I think so. If you have the amended bill you can compare it. Without reading it very carefully, I should say it was.

Q. Now what subsequent conveyances have there been. Please describe those? A. This seems to be a deed in trust. Melville D. Hensey to Thomas G. Hensey and John H. Soule, dated——

Q. Please read both the date of acknowledgment and the recordation. A. The 13th day of February, 1891. You want the date of acknowledgment?

Q. Acknowledgment and the recordation. A. Signed on 89 that date by Melville D. Hensey and acknowledged on the 24th day of February, 1891, F. B. Dant, notary public, and recorded on the 27th day of February, 1891.

Q. What was the purpose of that deed in trust? A. To convey to the trustees named therein.

Q. Who were they? A. Thomas G. Hensey and John H. Soule.

Q. And for what purpose? A. For the purpose of syndicating of some shareholders, including Mr. Soule and myself.

Q. Now, the next conveyance, please. A. The next conveyance is a deed from Thomas G. Hensey, John H. Soule, trustees, in trust for Walter R. Hensey, dated the 30th day of January, A. D. 1894, and recorded February 28th, 1894. I did not give you the name of the notary public.

Q. I don't care about that. Now the next one, please. A. The next one is a deed of trust from Walter R. Hensey to Thomas G. Hensey and Melville D. Hensey and is dated on the 30th day of January, 1894, and is signed by Walter R. Hensey and acknowledged before Anson S. Taylor, notary public.

Q. Now, please state whether or not there have been any mortgages or money raised at any time upon any of that tract? A. I think there was.

Q. I would like the dates of the mortgages? A. I can't 90 give them because I don't remember.

Q. Please state whether or not since January 19th, 1893, there have been payments made on account of the purchase of that land? A. There have.

Q. Were there any in the year 1893? A. I think there was.

Q. What persons were interested in that land? A. As shareholders?

Q. As shareholders or otherwise. A. John H. Soule and Mr. Stevens, and Mr. Holmes, and Mrs. Dyer and myself.

Q. Did you make payments in the year 1893, after January 19th, on account of your interest in that property? A. I did.

Q. What was the amount of those payments in that year? A. I don't remember.

Q. In the year 1893? A. Well, whenever it was demanded by the party holding the notes.

Q. You are one of the trustees, I believe? A. I am.

Q. Have you no account showing what moneys you have paid and when, on account of that tract of land? A. I did until the matter was cleaned up.

Q. Did you not keep a record of it in the books of Thomas G. Hensey or Thomas G. Hensey & Company? A. I did. I
91 kept it in an old book that was somewhat dilapidated and was done up for the purpose of having it bound, and was sent upstairs to the garret, and, through an inadvertence, and carrying other stuff up there by the clerks of the office, and subsequently, I suppose, it went out with the stuff that was supposed to be valueless.

Q. Is not it customary for real estate brokers to carefully preserve and keep their real estate books of the operations of their firm? A. Yes, and I supposed that I was doing it, but I am like other people, I am subject to accident.

Q. Have you not the books of your firm for the years 1893 and 1894? A. No, sir.

Q. Have you any books since those years which contain entires relating to this transaction? A. No.

Q. None whatever? A. None.

Q. Now, please state whether or not, since 1894, there have been payments made on account of the purchase of that land? A. There have.

Q. To what amount? A. Oh, I could not tell you. I don't remember.

Q. When did the property become clear of mortgage? A. It was finally all paid up—a small amount remaining unpaid—
92 in 1903.

Q. Please state whether or not any payments were made in the years 1899—1900—1901—1902 on account of either principal or interest? A. I think there were.

Q. To what extent? A. I don't remember.

Q. Haven't you any books that will show, or any papers? A. No, sir.

Q. None whatever? A. No, sir.

Q. I will ask you whether or not payments have been made on account of your share in the period since 1893 on this account, on account of this purchase? A. I think so.

Q. Did that money come out of your general funds? A. I don't remember what it came out of. I think not.

Q. What special fund did you keep out of which it might have come? A. I think I borrowed money for that purpose.

Q. Well, how did you pay back the money—out of your general fund? A. That became a personal matter.

Q. From whom did you borrow the money, if you know? A. I borrowed from Mrs. Kimberly.

Q. Please state whether or not the two receipts which I hand

93 you, represent payments on account of the Dry Meadows purchase, and what they are? A. These receipts were evidently paid to the National Bank of Washington.

Q. Please give the date and amount of payment? A. It seems to be August 12th, 1893, and February 12th, 1894.

Q. Did you pay your share of that? A. I did.

Q. Now, I would like you to please go over the tax payments, and state what taxes were paid, and the dates, as shown by the tax receipts which I hand you? A. All of 1891. Do you want the amounts?

Q. Yes; and the year. A. I have given the year. \$6.66. The first half of 1892, \$2.82. The second half of 1892, \$2.82. All of 1893, \$5.64. The first half of 1894, \$14.10. The second half of the same year, \$14.10. All of 1895, \$28.20. The first half of 1896, \$14.10. The second half of the same year, \$14.10. All of 1897, \$21.88. All of 1898, \$21.06. All of 1899, \$21.06. All of 1900, seems to be, \$10.53. All of 1901, \$10.34. All of 1902, \$9.78. All of 1903, \$22.00.

Q. Please state whether or not you paid your share of that? A. I paid it all. They were made out in a settlement to the shareholders. The shareholders reimbursed me, I think.

Q. You paid that money out of your general funds, did you not? A. Well, it came out of some of my bank account. I don't know whether you would call it general fund or not.

Q. You have no means of specifically identifying out of what you paid any part of this? A. I cannot.

(Cross-examination continued—page 743:)

Q. Please state whether or not since the institution of this suit you have attempted to make transfer of your interest in this land? A. None whatever. You mean in this Dry Meadows tract?

Q. Yes. A. No, sir.

Q. And you had an interest therein, had you not, when this suit was brought? A. I had, and still have.

* * * * *

(Cross-examination continued—beginning on page 801:)

Q. Were you present when Charles D. Caldwell testified in this case? A. I was.

Q. Was it on a Saturday? A. I would not undertake to say.

Q. I will ask you whether or not, on the following Monday there was not recorded a conveyance, or two conveyances, whereby the Westminster Street property was deeded? A. In 95 October?

Q. The first business day after Dr. Caldwell testified, whether there was not placed on record conveyance for the houses on Westminster street from you? A. Have you the date on which Dr. Caldwell testified?

Q. Yes. If you are anxious for it. I know that Dr. Caldwell testified on Saturday afternoon, October 24th. I will ask you whether or not on October 26th, which would be Monday, there was

not placed on record a deed of conveyance of the houses on Westminster street, title to which you held? A. The record will show that.

Q. To whom were these conveyances made? A. That was a deed that had been held by Mrs. Dodge two years before.

Mr. MERILLAT: I move to strike that out as not responsive. My question is as to whom were the conveyances made.

A. There were no conveyances made by me of that date. The only conveyance by which I transferred title was one to Mrs. Mary B. Dodge, which may have been recorded at that time.

Q. Don't you know the fact that they were recorded the day—the first business day after Dr. Caldwell testified? A. No, I don't know that. You state that as a fact. I accept it with a good deal of allowance.

96 Q. Who is Mary B. Dodge? A. She is my step-daughter.

Q. To whom did she make any conveyances? A. She conveyed three of those houses to Lyman D. Landon.

Q. How many houses all told did you convey to her? A. Seven.

Q. Was that the same Mary B. Dodge who, as it appeared in evidence, holds a note against the syndicate? A. It is.

Q. What were the circumstances connected with the making of the conveyance to Mary B. Dodge? A. The circumstances of making a conveyance to Mary B. Dodge occurred two years before. I needed the money to reduce the first trust on the property, on the demand made by the American Security and Trust Company, and she loaned me \$3,700 for that purpose. I gave her a trust on one of the houses, which was placed on record at that time. Mr. Landon, having a claim against me for \$2,250. I got Mrs. Dodge to give her note for \$5,250 on condition that she should hold a deed conveying all the houses to secure her \$3,700. and the \$5,250 of Mr. Landon's.

Q. Was the conveyance to her in discharge of that obligation of \$3,750? A. That was to secure her and Mr. Landon jointly, in the total obligation, two amounts.

Q. Well, was the conveyance then in discharge of both the
97 Landon and the Dodge obligations? I call for an answer.

A. Well, I want to get at your meaning, what you mean by "discharge"?

Q. Was it in payment of the obligation? A. Do you mean by that that she was to take the property absolutely?

Q. Yes. A. Yes.

Q. It was an absolute payment and settlement then of the obligation? A. It was, unless I paid her back the \$3,700 and settled with Mr. Landon, neither of which I have done.

Q. And the conveyance made to Landon in settlement and payment of the obligation? A. That deed was made by Mrs. Dodge, who held the title, and was made in settlement with Mr. Landon for the note which he held of Mrs. Dodge's of \$5,250.

Q. You are the agent, are you not, for the transaction of Mrs. Dodge's business? A. I am.

Q. Why was not that deed recorded until after Dr. Caldwell

testified? A. For the reason that I hoped to be able to sell the houses and to get a greater price and be benefited by that greater price myself. They were both debts, moneys had and received by me.

Q. Mrs. Dodge got four houses, and \$3,750, and Mr. Landon three houses for over \$5,000; is that correct? A. Yes, that
98 is right, but one of the houses that Mr. Landon got was more valuable than any of the others. It was the 10th street house.

Q. What does the 10th street house rent for? A. \$40.50 a month.

Q. How much was the trust on it? A. \$4,750.

Q. How much do the houses on Westminster street rent for? A. \$35.50.

Q. What is the trust on each of those? A. \$4,250.

Q. I will ask you whether or not there was any conversation between yourself and either Mr. Landon or Mrs. Dodge, or, as far as you know, between Mrs. Dodge and Mr. Landon as to the advisability of recording those deeds after Dr. Caldwell testified? A. I don't remember that the testimony of Dr. Caldwell had any influence in the matter at all. Mr. Landon felt that he ought to be protected, and it was so determined.

Mr. MERILLAT: I move to strike out that answer as not responsive, and ask the examiner to repeat the question.

(The Examiner did as requested.)

The WITNESS: You mean by that question as to whether there was any conversation between Mr. Landon and Mrs. Dodge and myself?

99 Q. I mean by that, between you and either of the other two? A. There undoubtedly was conversation, but Dr. Caldwell's testimony had no influence on it.

Q. Was any reference made to the session that had been held in this litigation? A. No, no reference made with respect to the session.

Q. Did you have a conversation with either of them—either Mrs. Dodge, or, I will ask you, did you have a conversation with Mrs. Dodge after Dr. Caldwell's testimony, and prior to the recording of the deeds? A. I do not know whether there were any conversations between us that were in any way influenced by the testimony of Dr. Caldwell, but I will say there were conversations in relation to the propriety of protecting Mr. Landon and protecting Mrs. Dodge, on account of the pendency of this suit.

Q. Well, with whom were those conversations? A. With Mrs. Dodge and Mr. Landon.

Q. Now, Mr. Hensey, I hand you certain deeds handed by you to me under the call made for their production, with relation to lot 19, in section 3, of the Barry farm subdivision in the District of Columbia. Now I ask you to state from the deeds, in your recollection as refreshed by them, the history of the transfer or acquisition of that property—transfer to or acquisition of that property by you?

100 A. The original deed does not seem to be here. The first deed that seems to be here was one—a deed of trust conveying to Carmody and Melville Hensey, dated July 15th, 1892, to secure \$300 recorded July the 27th, 1892. The next seems to be a

deed by myself and wife to Fountain Peyton, dated July the 30th, 1892, recorded August the 1st, 1892. The records would show the date on which I acquired that property. There is a deed of trust from Fountain Peyton to William Blaisland, dated the 30th of July, 1892, to secure \$450.

Q. Made payable to whom? A. Thomas G. Hensey, recorded August the 1st, 1892. Now, there seems to be a release here from Carmody and Melville Hensey, to Thomas G. Hensey, September the 12th, 1894, presumably the trust of \$400. There is another release dated the 11th of September, 1894, from Blaisland to Thomas G. Hensey, recorded the 12th day of September, 1894. Deed in fee from Fountain Peyton to Thomas G. Hensey, dated May the 16th, 1893, and recorded May the 17th, 1893.

Q. The consideration of that deed, please? A. \$10.

Q. No, the true consideration. What was it, if you know? A. I took back the property at the price that he paid me. There was some little allowance, I think, made, \$20. or \$30. something like that. The next deed I have is Thomas G. Hensey and wife, dated the 8th day of February, 1904, to William J. Bolway, the consideration is \$10, recorded the 11th day of February, 1904. The

101 next is a deed in fee from William J. Bolway to Ruth B. Hensey, dated the 8th day of February, 1904, the consideration is \$10. and recorded the 11th day of February, 1904.

Q. Who was Bolway? A. Bolway is my step-son.

Q. What was the true consideration of that deed? A. \$700 in money.

Q. Check or cash? A. Check and cash.

Q. Where is your son-in-law living? A. Living at my house. He is my step-son.

Q. Was he aware that this property was property as to which—property which was named in the complainants' amended bill? A. No, and if he did, it would not make any difference.

Q. Who is Ruth Hensey? A. My wife.

Q. And what was the consideration from Ruth Hensey to Bolway? A. \$10.

Q. The true consideration? A. The true consideration was \$700 of money which I received.

Q. So that, as I understand that transaction, you received \$700 from your step-son, your step-son received \$700 from your wife, as the true consideration of that transfer. Is that correct?

102 A. The true consideration was paid me by my wife for that property.

Q. Now was your wife aware of the fact that this property was named in litigation in the amended bill? A. She was.

Q. Prior to the conveyancing? A. She was.

Q. What mortgage, if any, is there, or was there, on that property prior to the conveyance to Bolway? A. No mortgage.

Q. Is it improved or unimproved? A. Improved.

Q. How? A. A small house on it; an acre of ground; a little less than an acre.

(Cross-examination continued—page 820:)

Q. Now what is the earliest date for which you have the books of Thomas G. Hensey, or Thomas G. Hensey & Company—the real estate books and other books? A. I have none.

Q. You mean by that, Mr. Hensey, that all the books of the real estate firm of Thomas G. Hensey, or Thomas G. Hensey & Company, except the rent book and the insurance book are gone? A. I do.

Q. In what books would your accounts with Lyman D. Landon and Mary B. Dodge appear? A. They would appear in that book?

103 Q. And that book has disappeared? A. Yes sir.

Mr. MERILLAT: That is all.

Hereupon the further taking of testimony in this cause and on this behalf was adjourned until May 4th, 1907, to meet at the same place.

— — —, *Examiner.*

WASHINGTON, D. C., *May 4th, 1907*—At 10:30 o'clock A. M.

Met pursuant to adjournment as next hereinbefore noted at the same place for the purpose of taking additional testimony on behalf of the complainants.

Present: Messrs. Chas. H. Merillat and M. N. Richardson for the complainants; William Henry White, Esq., for the defendants, Landon, Holmes, Kimberly & Dyer; Examiner and witness.

DANIEL B. WEEDON, produced as a witness for the complainants, and being duly sworn, testified as follows:

By MR. MERILLAT:

104 Q. Please state your age, your occupation and your place of residence, Mr. Weedon? A. I will be sixty years old on the 30th day of November. My occupation is with Terrell and Little, 713 14th street, real estate brokers, and I live at Takoma Park, D. C.

Q. Were you at any time in the employ of Thomas G. Hensey or Thomas G. Hensey & Company, and, if so, in what capacity and for how long? A. I went there in April, 1901, and was with him until he died. I looked after the insurance and the collection of rents and repairs and such things as that. At least, I did the collecting. He had other insurance clerks, but I did the collecting.

Q. Did Thomas G. Hensey have accounts with other people? A. What accounts do you mean?

Q. I mean people who entrusted money to him or people from whom he borrowed money. A. I do not know anything about that. I did not have anything to do with the books at all.

Q. Did he keep real estate books? A. I judge so. He had a rent book and an insurance book. They were the only things I ever looked at to see whether persons paid rent or whether there was a bill for insurance I should collect.

Q. Did he keep a book of sales of real estate and that sort of thing? A. Not to my knowledge.

Q. You had free access, did you not, to all of the books
105 and records of the office? A. No, sir; I had nothing, only to look after the rents and repairs and insurance.

Q. Would you not know from your occupation in the office whether or not he did keep a set of books such as are usually kept by a real estate business or firm? A. All I know he had those books. Miss Johnson had to do all that work. You know that. You were there.

Q. You say I know that. A. You saw her there.

Q. In what capacity are you connected with the estate of Thomas G. Hensey? A. Well, I think the court appointed me as administrator to the will.

Q. What are these books that you have handed me? Are they the letter press books kept by Thomas G. Hensey? A. Yes, sir.

MR. MERILLAT: We desire to offer in evidence from the letter press books a letter dated November 4th, 1903, to Mrs. S. V. Kimberly; a letter dated February 22nd, 1904, to Mrs. S. V. Kimberly, and another letter of date August 9th, 1904, and ask that they be copied into the record. I suppose you have no objection to the fact that they are not the originals, Mr. White?

MR. WHITE: I object to all of the letters as being irrelevant and immaterial, and I object to all but the letter of November 4th, 1903, as not being the best evidence, and for the reason that there is no evidence of their having been delivered.

Said letters are as follows:

106

Nov. 4, 1903.

Mrs. S. V. Kimberly, 133 F St. N. E., City.

DEAR MRS. KIMBERLY: I expected you in on Tuesday. I have seen Mr. Howell and he promised to visit Mr. Edmonston, the president of the Columbia Title Co., on Monday. I have not seen him since, as I have been unable to catch him at his office.

I would like to see you about the investment of the \$2500.

Respectfully yours,

THOS. G. HENSEY.

Removed to Room 405 Colorado Bldg., 14th & G Sts. N. W.

22 FEB'Y, 1904.

MY DEAR MRS. KIMBERLY: Your letter dated Feb'y 14, 1904, asking for interest on \$2500. Broad Branch Stock, due from me received today. I supposed you would bring the note over and have the interest endorsed on the back, and I was waiting for you and was ready.

Please don't forget to *bring the note* when you *come over*.

Enclosed find my check for \$34.37 the amount of interest on the above.

107 I saw Mr. Edmonston yesterday and he told me he had given orders to have the repairs made. Mr. Howell conveyed the house to Mr. Miller, but it is the Columbia Title Co. and that is good enough for me.

Sincerely yours,

THOS. G. HENSEY.

Mrs. S. V. Kimberly, 901 Carrollton Ave., Balto., Md.

AUG. 9, 1904.

Mrs. Susan V. Kimberly, c/o Mrs. Jno. Reuse, Shenandoah Junction, Jefferson Co., W. Va.

DEAR MRS. KIMBERLY: Your letter of the 8th inst. respecting the Broad Branch interest, received.

Enclosed, find check for \$34.37 to meet the same, and when you return to the city, please call with the note that I may endorse the payment on the same. We We have had some warm weather here, but on the whole we have had a pleasant summer. Hoping you are very well, I am,

Sincerely yours,

THOS. G. HENSEY.

By Mr. MERILLAT:

108 Q. Mr. Weedon, are these books which you have produced here those which were regularly kept by Mr. Hensey? A. Those books?

Q. (Continuing:) As being letter press copies of letters sent by him?

Mr. WHITE: Objected to because the witness has said that it was no part of his duties to attend to the correspondence of the office.

A. Yes, sir.

Q. Are you familiar with Mr. Hensey's system as to keeping a record of letters sent by him? A. Miss Johnson always attended to that. She mailed them. She wrote the letters and mailed them. I sometimes dropped them in the box for her.

Q. Is Ella Johnson her name?

Mr. WHITE: E. Olivia Johnson.

Q. She is with Terrell and Little, is she not? A. No, sir; she is on G street between 13th and 14th streets.

By Mr. RICHARDSON:

Q. With whom? A. I was just trying to tell you. I think it is Jordan and Bloomer.

Q. As administrator of Thomas G. Hensey have you made a search for any books showing accounts between Thomas G. Hensey and Lyman D. Landon? A. Yes, sir.

109 Q. Or between Thomas G. Hensey and Susan Kimberly? A. Yes, sir; I did not find a book. I heard they had these. I went there a little after seven o'clock this morning. I went there and there were three boxes there. There were only three boxes there.

Q. Please state whether or not you have any knowledge, prior to your becoming administrator and while you were in the employ of Mr. Hensey, of there being any book or books showing accounts between himself and Lyman D. Landon? A. None to my knowledge, sir.

Q. Were there any books showing accounts between himself and Mrs. Kimberly? A. None that I know of.

Q. You have produced, then, all that you have been able to find under the subpoena duces tecum served on you? A. Yes, sir.

Cross-examination.

By Mr. WHITE:

Q. As I understand, Mr. Weedon, while you were employed by Mr. Hensey the only books you had anything to do with were the books in which were kept the accounts of rents collected and insurance? A. Yes, sir.

Q. And that you have no knowledge of any other books at all? A. Well, none that I know of. I saw there were two or three books laying there. It was no business of mine and I never went there.

Q. You do not know what other account books Mr. Hensey kept? A. No, sir.

Q. Have you been able since you have been administrator
110 to find any books of account at all except the rent books and insurance books? A. That is all excepting these three old books laying there in the morning. It was way back in eighty some. I think it was some kind of a corporation or something of that sort, or a syndicate. I asked Mr. Al. Hensey what they were and he said they were books of his father used way back when he was a boy or something to that effect. Eighteen or twenty years ago.

Q. Have you examined every place where in your opinion and from your knowledge of Mr. Hensey's affairs such books would likely to be found? A. Yes, sir.

Redirect examination.

By Mr. MERILLAT:

Q. Did Mrs. Hensey get any books out of the office after the death of Mr. Hensey? A. Not to my knowledge. When I asked her about the books she said she did not think there were any books. She said she would look the list up and when she came down again she said there were no books except the three books and the old files where she kept the papers and it did not have anything to do with that business.

Q. Have you any objection to my examining those three books you referred to to ascertain whether or not there is anything relating to these matters? A. No, sir.

Q. Have you any knowledge of the destruction at one time
111 of what was known as the real estate book of Thomas G. Hensey or Thomas G. Hensey and Company? A. No, sir.

Q. I mean subsequent to the institution of the suit by Dr. Richardson, and others, against Mr. Hensey? A. No, sir.

Q. Is there anything in this rent book that would throw light upon this controversy? A. In the rent book it just gives the owner's name of the house and how much money has been paid them and how much for repairs.

Q. Have you the checks and check stub books of Thomas G. Hensey for any part of the years from 1900 to 1905? A. Not to my knowledge that I know of. I have not noticed anything of the kind.

Q. Did he not keep check stub books? A. I think so.

Q. Do you know in whose custody these check stub books are? A. They would be in that box up there if they would be anywhere I suppose.

Q. Is it not a fact that Mr. Hensey did have and did keep his check stub books and put away the same? A. Well, I judge so, Most business men do. I never had anything to do with that at all.

Q. Did you not see around his office, as a matter of fact, a number of books showing by their appearance that they were check stub books with red tape tied around them? A. No, sir.

112 Q. Then, without red tape around them? A. I saw check books that used to be around the office all the time.

Q. Do you know what became of those check stub books before his death? A. No, sir; I do not.

Mr. MERILLAT: I also desire to offer in evidence a letter of September 26th, 1903, from Thomas G. Hensey to Mrs. Kimberly at Duffields, West Virginia.

Mr. WHITE: I renew the objection as made to the letters copied into the record.

Mr. MERILLAT: That letter will be copied into the record.

Said letter is as follows:

SEPT. 26, 1903.

Mrs. S. V. Kimberly, Duffields, W. Va.

DEAR MRS. KIMBERLY: The loan on 2232—13th St., N. W., of \$2500. which you held, is due Oct. 5th and will be paid in full. It will be necessary for you to send me the certificate of title which you have and any other papers that may be in your possession relating to that case; also to endorse the note which I have.

I presume you will be back to the City before that time; if not, kindly inform me at once.

Very truly yours,

THOS. G. HENSEY.

113 Mr. MERILLAT: I also offer in evidence a letter of November 4th, 1903, from Mr. Thomas G. Hensey to Mrs. Kimberly.

Mr. WHITE: I renew the objections heretofore made to the other offers.

Mr. MERILLAT: This letter will likewise be copied into the record. Said letter is as follows:

Nov. 4, 1903.

Mrs. S. V. Kimberly, 113 F St. N. E., City.

DEAR MRS. KIMBERLY: I expected you in on Tuesday. I have seen Mr. Howell and he promised to visit Mr. Edmonston, the President of the Columbia Title Co., on Monday. I have not seen him since, as I have been unable to catch him at his office.

I would like to see you about the investment of the \$2500.

Respectfully yours,

THOS. G. HENSEY.

Mr. MERILLAT: That is all.

Mr. WHITE: That is all.

114 Signed for the witness by me by consent and agreement of counsel, this — day of ——— 1907.

———, *Examiner.*

Hereupon the further taking of testimony in this cause and on this behalf was adjourned subject to agreement of counsel or notice.

———, *Examiner.*

* * * * *

Objections.

By Mr. WHITE: I make the following objections:

To all of the extracts offered as from the record in Equity No. 24,084 and set out on pp. 4 to 55, inclusive, for the reasons that such extracts are not the best evidence of the testimony of Lyman D. Landon and Thomas G. Hensey, and that their testimony has not been properly proved.

To all of such extracts as against all the defendants except defendants Thomas G. Hensey and Lyman D. Landon and Melville D. Hensey, for the reason that the extracts purport to be testimony of witnesses in another cause to which the other defendants were not parties and had neither the right nor privilege of cross-examination.

To all of such extracts as hearsay as against defendants Soule, Holmes, Stevens, Kimberly, Dyer and M. D. Hensey; and
115 to the extracts purporting to be from the testimony of Thomas G. Hensey as hearsay as to defendant Landon, and vice versa that of Landon as to defendant Thomas G. Hensey.

To all of such extracts purporting to be testimony of Landon, and to all of such on pp. 47 et seq. purporting to be testimony of Thomas G. Hensey, as immaterial and irrelevant to the issues in this case.

To all of the extracts purporting to be testimony of Thomas G. Hensey as to contents of deeds and papers as not being the best evidence of their contents.

* * * * *

Pursuant to request of counsel I hereby give notice that the complainants in the above entitled cause will proceed to take additional testimony in support of the allegations contained in their bill of complaint before me on Friday, March 13th, 1908, at 3.30 o'clock

P. M., at the law offices of Mason N. Richardson, Esq., Fendall Building, Washington, D. C.

You are invited to be present and take such action as you may be advised.

EDWIN L. WILSON, *Examiner*.

To William Henry White, Esq., Att'y for Lyman D. Landon, Annie Holmes, Susie V. Kimberly and Leonard H. Dyer; Melville Hensey, Esq., defendant; Helen M. Soule, defendant; Charles W. Stevens, defendant.

116 Copy of above notice served this 12th day of March, 1908.
 ———, *Examiner*.

* * * * *

Parties met pursuant to adjournment at office of Mason N. Richardson, Esq., Fendall Building, at two-thirty o'clock, Tuesday, March 17th, 1908, for the purpose of continuing the taking of testimony on behalf of the complainants.

Present: Messrs. Charles H. Merillat and Mason N. Richardson, Solicitors for the Complainants; William Henry White, Esq., Solicitor for the Defendants Landon, Holmes, Kimberly and Dyer, the Witnesses and the Examiner.

Whereupon, J. ARTHUR LYNHAM, a witness produced on behalf of the Complainants, having been previously sworn in this cause, was examined and testified as follows:

Direct examination.

By Mr. MERILLAT:

Q. Mr. Lynham you have been heretofore sworn in this case? A. Yes, sir.

117 Q. Please state whether or not you are able to recollect the testimony or statements made by Lyman D. Landon in the case of Richardson vs. Hensey, Equity No. 24084, from your personal recollection? A. I am not.

Q. Please refresh your recollection from the testimony of Mr. Landon in the transcript handed you (handing witness copy of testimony) and state whether or not having so refreshed your recollection you are able to state from your independent recollection as so refreshed what Mr. Landon testified to in that cause? A. I am not.

Q. Mr. Lynham will you please state whether or not you are able to state from your memory and recollection what Thomas G. Hensey testified to, or what statements he made while on the witness stand in the same case? A. I am not able to do that.

Q. Refreshing your recollection from the transcript of testimony please state whether you are able with your recollection so refreshed by the transcript to state from your independent recollection what statements were made or testimony given Thomas G. Hensey in said cause? A. I am not.

Mr. MERILLAT: The Complainants now again offer in evidence the transcript from the testimony as heretofore offered, having recalled

the witness for the purpose of laying this foundation for the questions heretofore asked.

Mr. WHITE: I renew the objections heretofore made.

Mr. MERILLAT: That is all.

J. ARTHUR LYNHAM.

118 Signed for witness by consent this 27- day of October,
1908.

EDWIN L. WILSON,
Examiner in Chancery.

Whereupon JOHN H. SOULE, a witness produced on behalf of the Complainants, after being first duly sworn was examined and testified as follows:

Direct examination.

By Mr. MERILLAT:

Q. Will you produce the bank stubs for payment in the years stated, as called for in the subpoena? A. There were no payments in those years, the transaction was closed in — the last payment was made some two years before the dates you mention—1897. No payments made after that.

Q. Will you show me your record of the last payment, Mr. Hensey has testified and the record will appear to bear him out that the encumbrances were not cleared off until 1903?

Mr. WHITE: I object to that statement as highly improper.

(Witness hands check stub book to Mr. Merillat.)

Q. This check stub book does not show the amount you paid Mr. Hensey?

(Witness looks at check stub.)

A. \$454.32.

119 Q. As I understand you the last payment made was April 6th, 1897, \$454.32, on account? A. Yes, the last payment.

Q. Have you a record of your other payments to Mr. Hensey on this account? A. I have the notes that I gave him—the first note, and I think all the subsequent ones.

(Witness hands Mr. Merillat papers.)

Q. The total of the notes handed me by you foots less than one thousand dollars, and you have heretofore stated you paid \$1400.00 on account? A. I think I was mistaken, it was \$1200.00—I was under the impression it was \$1400.00, but I must have been mistaken.

Q. Then as I understand you, on account of your share or your interest in this syndicate you have made no payments on account of your share in this property since 1897? A. Nothing appears of record.

Q. Do you mean by that you have made payments and that there are some payments on account of your share not of record? A. No.

Q. After that date? A. I know I owed him about four hundred dollars, and that was just about the amount of the last payment. I have paid him nothing since that \$400—that completed the payments of the \$1200.00.

120 Q. You had agreed, had you not, that you would pay your proportionate share of all taxes, interest and any incumbrances upon the property—was that not the condition upon which you held your interest or Helen Soule held her interest in this property? A. I do not remember any agreement as to the encumbrances—I was under the impression that it was unencumbered. The taxes—I agreed to pay the taxes.

Q. In what form did you pay your share of the taxes—by check? A. Yes, I have the tax receipt or Mr. Hensey's receipt.

Q. Have you any checks showing your payments of taxes in the years 1900, 1901, 1902 and 1903? A. I suppose we have—I have them if they were paid—if payments were made during those years I have. You did not ask for any payments on account of taxes. I have the tax bills receipted or receipt from Mr. Hensey.

Q. You do not mean to say you paid the taxes on this property from the year 1900 on—you were not trustee? A. No.

Q. What had you to do with paying the taxes? A. I paid my proportion of the taxes.

Q. And you say you paid those by check? A. Yes.

Q. Will you please produce your checks—that is exactly what the subpoena called for? A. I did not understand it on account of taxes. I have receipts from Mr. Hensey.

121 Mr. MERILLAT: Well, we will adjourn the session and you will please produce the check stub and checks for those years.

Mr. MERILLAT: You may cross examine.

Cross-examination.

By Mr. WHITE:

Q. Mr. Soule, do these notes which you have produced relate to the purchase of this certificate? A. Yes.

Q. Which is now held in the name of Mrs. Soule? A. Yes.

Mr. WHITE: I ask to have the Examiner mark these seven notes for identification, and also the stub No. 309, dated April 6th, 1897, being third page of stub book, for check for \$454.32, mentioned by the witness.

Mr. MERILLAT: Complainants desire to state that they did not offer the notes or checks produced in evidence because they are not material, and were not called for by the subpoena, the witness having produced everything except what the subpoena called for.

Whereupon an adjournment was taken to meet at same place at three-thirty o'clock in the afternoon, Tuesday, March 24th, 1908.
Signature of witness waived.

EDWIN L. WILSON, *Examiner*.

122 WASHINGTON, D. C., *June 18''*, 1908.—*Thursday at 2 o'clock p. m.*

Met pursuant to adjournment as noted herein at the law offices of Mason N. Richardson, Esq., Fendall Building, for the purpose of taking additional testimony on behalf of the complainants.

Present: Messrs. Charles H. Merillat and Mason N. Richardson on behalf of the complainants; Mr. William Henry White on behalf certain defendants; Examiner and Witness.

Whereupon ELLEN OLIVIA JOHNSON, produced as a witness on behalf of the complainants, and after being duly sworn according to law, testified as follows:

By Mr. MERILLAT:

Q. Miss Johnson, please state what position you held with Thomas G. Hensey and for how long you worked for him? A. I was stenographer and clerk in general and principally insurance clerk. I had other duties. I worked from March, 1903, until December 1906.

Q. Up to the date of his death, then? A. Yes, sir.

Q. How frequently would you see Mr. Lyman D. Landon. A. Very frequently.

123 Q. And where would you see him? A. He would come to the office.

Q. Do you mean up to the office of Thomas G. Hensey? A. Yes, sir.

Q. How many times a week on an average would he be in Mr. Hensey's office? A. I could not say any definite number of times, or any definite time any particular week. Sometimes nearly every day I should say. At other times may be not so often.

Q. He was a very regular and a very frequent visitor. Is that correct? A. I would say he was very regular. He came quite often.

Q. During the time you worked there would he be there as much as two or three times a week? A. Some weeks.

Q. Taking the whole period on an average, would you think he would be there that often? A. Some weeks he was and some weeks he was not.

Q. Did that same frequency of visits continue up to Mr. Hensey's death? A. I could not say. Mr. Landon grew feeble as he got older and did not see him quite so often.

Q. The few years that you were there how often would he be at Mr. Hensey's office? A. I do not know. I did not know him so well by sight as I came to know him afterwards.

124 Q. Was any one as frequent — visitor to Mr. Hensey's office as Mr. Landon? A. I don't know of any one now. I could not say offhand.

Q. Mr. Weedon stated upon the stand that you would have to be asked about the books because you kept the books, the question referring to the real estate books. What have you to say about that? A. All I did was to post the rents from day to day in a tenant ledger and to the owner's ledger.

Q. What became of that ledger, if you know? A. I do not know.

Q. Did it disappear at any time during Mr. Hensey's lifetime?

A. Not that I know of.

Q. Where would you keep a record of any sales that were made?

A. I had nothing to do with the sales. I know of no record where they were kept.

Q. Or loans that were made? A. I know nothing about loans.

Q. You never saw either of those books? A. If I saw them I did not know what they were. I never examined them.

Q. What about an account between Mr. Landon and Mr. Hensey. Did you ever see that account? A. I saw a rent account.

Q. Any other? A. I do not remember of seeing any other.

Q. What became of the book with the rent account? A.
125 I do not know. That was the rent ledger, the one I spoke of before.

Q. What became of that ledger? A. I do not know. It was about the office up to the time I left, so far as I know.

Q. What did you know of Mr. Landon's frequent visits to the office? A. I do not know of any particular occasion except he would come in once a month to get his rents. All others I suppose were personal visits.

Q. Have you any knowledge? A. I have no knowledge; no, sir.

Q. Have you any knowledge with relation to this deed dated October 17th, 1901, which I now hand you, a part of which is in purplish ink and a part of which is in greenish ink? A. I do not know anything about it. It was written before my time, if it was 1901.

Q. What kind of a typewriting ribbon did you use in the office?

Mr. WHITE: I object to that as immaterial.

A. I may have used purple and I may have used some other color. I really do not remember.

Q. Did you use more than one kind of ribbon at the same time?

A. I do not know. At the same time? I don't see what you mean. In what way do you mean?

Q. Did you have two machines there with two different
126 ribbons? A. One machine. The only time I had two ribbons was when I changed from one ribbon to a new one. I do not know that I changed the color. Maybe I did.

Q. Have you any knowledge of any business dealings between Mr. Landon and Mr. Hensey? A. Nothing except the rents.

Q. To whom was that rent ledger turned over? A. I do not know.

Q. (continued). After Mr. Hensey's death? A. I do not know. I do not know that it was turned over to anybody.

Q. Who took charge of Mr. Hensey's books and papers in the office after his death? A. I do not know.

Mr. WHITE: No cross-examination.

ELLEN OLIVIA JOHNSON.

Signed for the witness by me by consent and agreement of counsel,
this 27 day of October 1908.

EDWIN L. WILSON, *Examiner*.

Mr. MERILLAT: Counsel for complainants desire to offer in evidence the original bill of complaint with the Clerk's entries thereon in equity 24,084; the docket entries showing service of summons in said cause upon the three defendants, Thomas G. Hensey, Melville D. Hensey and Mellen C. Hooker; the amendment with the court file marks and orders on the amendment to said bill of
127 complaint designating the "Dry Meadows" property as part of the property in litigation in equity 24,084 with the entry thereon of the receipt by counsel for Thomas G. Hensey of a copy of said amendment, and admitting service thereof; a notation from the original record filed in said cause of the several dates of testimony after the date of filing the amendment in said cause with the appearance of counsel for the parties defendant; the decree of the court in said cause and the order of the court appointing Mr. Richardson to succeed Mr. Thomas as trustee and the decree correcting the description of the property known as "Dry Meadows." Counsel for complainants desire to file the same as exhibits in said cause as a part of the testimony in said cause. Counsel also desire to offer of record an examined copy of a deed taken from the records of the Clerk's office and purporting to be made on May 19th, 1906, conveying from Thomas G. Hensey and Melville D. Hensey, trustees, interests in the "Dry Meadow" syndicate to J. W. Stephens, Leonard H. Dyer, Helen M. Soule, Annie Holmes, Lyman D. Landon and Susan B. Kimberly.

Mr. WHITE: In order to save expense I waive formal proof by the Clerk that the papers are duly recorded in his office as a part of his record and waive the right to require formal proof of the certified copy thereof and consent that the Examiner may compare these with the originals on file and certify that they are true copies.

I object to the original bill in equity 24,084, and all other papers in said cause offered on the ground that they are incompetent, irrelevant and immaterial for the reasons: First, that none of the
128 parties in this cause except Thomas G. Hensey and Melville D. Hensey are parties to that cause; that in equity cause 24,084 the Henseys were not sued either in the original or amended bills as trustees of the property involved in this suit: Second, that there is no lis pendens made by the proceedings in equity cause 24,084 as to the parties to this suit excepting the two Henseys personally.

I further object to the original and amended bills in equity 24,084 for the reason that they do not describe the property involved in this suit; the amended bill was filed without leave of court; that the amended bill and the prayers thereof are insufficient to make it a lis pendens.

I further object to the decree on the ground that it is not lis pendens and is not binding upon any of the defendants in this cause except possibly Thomas G. Hensey personally, and to the amended decree on the ground that none of the parties in this cause had any actual or constructive notice thereof.

Mr. MERILLAT: Counsel for complainants desire simply to state that they are proceeding against the undivided interest or interests

of Thomas G. Hensey in "Dry Meadows" and not against the property as a whole; Hensey's interest as represented by syndicate certificates or declarations being a separate entity and a separate title from the title he held as trustee for the contributors to the syndicate purchase of the entire tract.

129 Mr. WHITE: Because of which statement I make the further objection that the Dry Meadows certificates are nowhere mentioned or attempted to be described in either the bill or any of the amendments thereof in equity 24,084.

It is agreed by counsel that execution was issued in said cause and returned "nulla bona" as to all three defendants with the exception of a sum less than one thousand dollars.

Said papers and records offered in evidence are in words and figures following, to wit:

130

Bill.

Filed July 18, 1903.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Eq. No. 24084, Doc. 54.

CHARLES W. RICHARDSON, JOSEPH W. LITTLE, MARY B. CUMMINGS, W. A. Bevard, F. H. Chittenden, Frances E. Grice, B. Richards, Geo. C. Esher, Mary A. Heinz, Alice Titcomb, William B. Brittain, Pauline Heinz, James T. Brown, Gertrude L. Chittenden, Etta Beatty, Bernard E. Fernow, Joseph W. Noble, Elizabeth Olmstead, Leah Tallmadge, Complainants,

vs.

THOMAS G. HENSEY, MELLEN C. HOOKER, MELVILLE D. HENSEY, Defendants.

Your complainants respectfully state as follows:

1. That they are citizens of the United States and residents of the District of Columbia, and bring this action in behalf of themselves and all the other members of the syndicate herein referred to similarly situated as beneficiaries under the syndicate agreement and deed of trust hereafter described and set out, the other parties to said syndicate agreement and deed of trust too numerous to mention and many of them being widely scattered outside of the jurisdiction of this Court, so that it would be impracticable and would cause vexations, delays and injustice to join all persons as parties, complainant or defendant who like complainant- are beneficiaries under the syndicate agreement and deed in trust hereinafter mentioned and whose interests are identical with those of your complainants.

2. That the defendants are citizens of the United States and residents of the District of Columbia, and that the defendants Thomas G. Hensey and Mellen C. Hooker are sued in their own right and as trustees under the hereinafter described deed in trust; that Mel-

ville D. Hensey is sued in his own right and as agent of the
131 trustees aforesaid and of your complainants and as a beneficiary under the hereinafter described deed in trust and syndicate agreement.

3. That prior to the 14th day of January, A. D., 1903, the defendants Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, each in what he did acting in conjunction with and for and on behalf of the other two defendants, solicited or induced your complainants and the other members of the syndicate hereinafter mentioned to join them, the said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, in a syndicate for the purchase of the Dean tract of land in Block 12, of Le Droit Park. They stated to your complainants that they had an opportunity to purchase the aforesaid land at a cheap price that would certainly net a profit in a very short time, but that they, themselves, had not sufficient money available with which to purchase the aforesaid tract of land which would cost \$150,000 from its then owner, (naming as complainants are informed and believe to some of the prospective shareholders Mrs. Amanda Dean, as the owner) and they said that for this reason they desired to form a syndicate and to interest your complainants and others in its purchase on equal terms with themselves, the organizers of the syndicate, stating that they, the said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey each would take shares in the proposed syndicate and said property when acquired would be taken and held in the names of said Thomas G. Hensey and Mellen C. Hooker, in trust for the use of the persons who furnished the purchase money of said real estate, and that the trustees would handle and dispose of the land as trustees for all the shareholders in the syndicate to the best interest of all concerned and that the proceeds derived from sales of the land to be acquired would be divided among the persons interested therein proportionately to the investments in the syndicate. That said defendants Hensey, Hooker and Hensey represented to your complainants and they so understood that the cost of the land from the owner, Mrs. Amanda Dean, and the lowest price that the same could be purchased for was \$150,000 of which \$50,000 would have to be paid in cash and the balance in notes. That the syndicate would be organized on a basis of \$150,000 divided into 100 shares of \$1,500 each, representing the lowest price for which the land could be obtained as your complainants were led to believe by said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey; that they treated the defendants as their agents in the purchase of the property; that such relation as principal and agent was understood to exist, and your complainants aver and charge did exist between your complainants and the organizers of the syndicate to whom the complainants turned over their moneys; that complainants then having faith and confidence in the defendants as their agents and trustees did not investigate their statements but entered into the syndicate in the belief that the representations made them were true and did not discover to the contrary until recently. That defendants represented that the price

named was a low one, that the land would rapidly increase in value by reason of certain events which would occur in a short time; 132 that it never would be necessary to make further payments on account of said purchase; that as soon as sufficient number of shares were agreed to be taken to assure formation of the syndicate and a first payment of \$500 per share was made by each of the subscribers to the syndicate, they, the aforesaid Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, which last named person your complainants were led and induced to believe was an agent for the proposed trustees and for the shareholders and who disclosed himself as "accountant for trustees" in the declaration of trust hereinafter referred to would purchase the land from its owner and thereafter would assign shares to each subscriber to the syndicate in proportion to his shareholdings; that it was stated by the defendants aforesaid to your complainants and others who became subscribers to the syndicate that by said subscription they would get in on the "ground floor" that is to say would acquire the aforesaid Dean tract which they, the syndicate organizers, had an opportunity of purchasing at the first cost price and would share equally with the managers of the syndicate in the profits that all would realize from the deal, into which, as stated, it was represented and your complainants were induced to believe all would go on equal terms. That your complainants have learned only recently that said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey studiously concealed from your complainants that they or any one of them had purchased or intended to purchase the aforesaid land or had an option thereon or had the refusal of the same at a price much less than the total price named to your complainants and that there was any purpose on his or their part to purchase the land from its owner, Mrs. Amanda Dean, for his or their individual benefit. Your complainants on the contrary had it represented to them, and they understood and believed that they would acquire said land at the lowest price which the owner aforesaid would accept for the same, that is, for the price of \$150,000. That your complainants would not have invested their money in said syndicate had they known, as they have learned only recently, the real facts, that the price had been misrepresented and that they were paying many thousand dollars more than Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey or either of them had paid or were to pay for the said land to its owner, Mrs. Amanda Dean. But that relying upon the representations of said defendants, Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey that the land was being bought from the owner for \$150,000 and was a low price, and at that time having faith and confidence in the integrity, honesty and fair dealing and knowledge of real estate values of the defendants, Hensey, Hensey and Hooker, your complainants agreed to become and on perfection of the organization of the syndicate did become members of the trust estate or syndicate they the aforesaid defendants were organizing and did organize your complainants each bound himself to take certain numbers of shares and to pay the price agreed on for each share in and as the same should be demanded

of him. That your complainants have since and very recently
133 learned that the statements made to them by the defendants
aforesaid, Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, as to the price of the land aforesaid from the owner, namely, \$150,000 were false and that your complainants by means detailed at length hereafter had been defrauded out of the difference between this price and the price actually paid the owner, Mrs. Dean, namely, between \$112,000 and \$120,000, besides out of certain moneys in connection with erection of buildings, on the said land referred to hereinafter.

4. That thereafter your complainants some time in the early part of January, 1893, to the best of your complainants' knowledge, recollection and belief, received information from the defendants, the aforesaid Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, that they had succeeded in getting a sufficient number of subscribers to form said syndicate and that your complainants by the terms of their agreement should deposit with them, the said defendants, the amounts your complainants had agreed to contribute as a first payment in and for the purchase of the land to be bought, that is to say, \$500 for each and every share subscribed. That your complainants thereupon gave to the defendants moneys to the amount they severally had agreed to pay in on account of their shares, that is, \$500 for each and every share your complainants subscribed for. Some of your complainants made their payments to the aforesaid defendants prior to the 14th day of January, 1893. Your complainants are informed and believe and therefore aver that the books of the syndicate show that the entire one hundred shares into which the syndicate capitalization was divided was subscribed for and taken and the \$50,000 represented as necessary to be paid as a first payment for and on account of the purchase of the tract of land to be bought by the syndicate was actually paid in, through Melville Hensey, Thomas G. Hensey and Mellen C. Hooker, to the syndicate trustees on January 14, 1893, the date when, as the records of the District of Columbia show, there was executed a deed conveying the Dean tract of land therein referred to to Melville D. Hensey.

5. That thereafter, on the 16th day of January, 1893, there was executed by and between each of your complainants and the other shareholders in said syndicate and the trustees a written agreement styled a "Declaration of Trust" setting out the terms and conditions on which the several parties to the syndicate held their interests in said syndicate. A true copy of said "Declaration of Trust" is attached hereto marked Exhibit — and is prayed to be read as a part hereof, the same being identical with those held by all the shareholders save as to names of beneficiaries and number of each certificate. By said "Declaration of Trust" it was declared that Thomas G. Hensey and Mellen C. Hooker, trustees, with power to sell or mortgage, hold in trust under a certain deed from Melville D. Hensey dated January 16, 1893, lots 14, 15 and 16 in block 12 of A. L. Barber and Company's subdivision of Le Droit Park and also lots 19, 20, 21, 22, 23 and 24 in Amanda M. Dean's subdivision
of lots in block 12 of Le Droit Park subject to certain trusts
134 to secure payment of \$100,000 on said land, and that said
Thomas G. Hensey and Mellen C. Hooker were trustees for an

undivided one-one-hundredth interest held as tenants in common by each owner of one share in the "Declaration of Trust," but subject to payments of assessments on each shareholder as they might be called on to pay assessments. And your complainants aver that they have paid all lawful assessments in and as the same have become due and payable under the terms of said declaration of trust and were and still are members of said syndicate with all the rights thereunto appertaining.

6. That, as stated in the "Declaration of Trust" hereinbefore referred to, the title to the land owned by said syndicate was conveyed to Thomas G. Hensey and Mellen C. Hooker under a certain deed in trust from Melville D. Hensey, which said deed in trust is attached hereto marked A-2 and is prayed to be read as a part hereof. That in and by said deed in trust there is conveyed by Melville D. Hensey for the sum of \$100 to Thomas G. Hensey and Mellen C. Hooker as trustees the land purchased for the aforementioned syndicate, the same being situated in the County of Washington, District of Columbia, described as follows:

All of lots Fourteen (14), Fifteen (15) and Sixteen (16), in Block numbered Twelve (12), in A. L. Barber and Company's subdivision of certain tracts of land, now known as "Le Droit Park," as per plat recorded in Liber Governor Shepherd, folio 15, of the records of the office of the Surveyor of the District of Columbia. Also all of lots numbered Nineteen (19), Twenty (20), Twenty-one (21), Twenty-two (22), Twenty-three (23) and Twenty-four (24), in Amanda M. Dean's subdivision of lots in said Block Twelve (12) "Le Droit Park" as per plat recorded in Liber County No. 8, folio 35, of the records aforesaid, and the same being conveyed to said Thomas G. Hensey and Mellen C. Hooker as trustees subject to payment of two certain deeds of trust aggregating \$100,000 with "full power to sell, mortgage, lease or otherwise dispose of the same or any part thereof." That all of said deeds, including the aforesaid deed in trust and a deed in fee from Amanda M. Dean to Melville D. Hensey, which is attached hereto marked Exhibit A-3 and prayed to be read as a part hereof at on and the same time, on January 19, 1893, in the office of the Recorder of Deeds for the District of Columbia and your complainants then and from that time until very recently had supposed that Melville D. Hensey in all transactions to formation of the syndicate and in executing both said deeds was acting as agent for the trustees and for all the syndicate shareholders.

7. Your complainants are informed and believe and therefore aver and charge that by the misrepresentations, concealments artifices aforesaid a fraud was perpetrated on your complainants and by such fraud they were induced by defendants to advance to defendants, their agents, the moneys of your complainants for the purchase of the aforesaid land, which aforesaid land thereupon was turned over to your complainants at an advanced price and at a large wrongful profit, namely, the difference between \$112,000 or \$120,000,

the price for which Melville D. Hensey acquired title to
 135 the aforesaid land from its owner, Mrs. Amanda Dean, and
 \$150,000, to the organizers of the syndicate and trustees for
 your complainants.

That the means whereby said fraud was perpetrated and consummated was as follows: Thomas G. Hensey and Company, is a firm of real estate brokers in this city, of which said firm Thomas G. Hensey was and is the senior partner and of which said firm as your complainants are informed and believe Melville D. Hensey, then a young man 23 or 24 years of age and without independent means so far as your complainants have been able to learn, was an employee or clerk, and in which firm your complainants are informed and believe and therefore aver said Melville D. Hensey became a partner. Mellen C. Hooker is a real estate broker in the City of Washington. Some time in 1892 as your complainants are informed and believe and therefore aver the persons above named learned the price at which the land hereinbefore mentioned could be purchased, namely, the price at which Melville D. Hensey did subsequently acquire title to the aforesaid land, between \$112,000 and \$120,000. They thereupon undertook to form a syndicate for its purchase and the three defendants named, the Messrs Henseys and Hooker, proceeded in divers ways to interest their friends and acquaintances and persons who had confidence in them in its purchase, soliciting them to become members of the syndicate they proposed to form, stating to them that they, meaning the organizers of the syndicate, could buy the land from its owner for \$150,000, that they would act for and in behalf of those who aided them to effect the purchase, that the land was cheap at this price, that they themselves would take a certain number of shares in the syndicate, and would take the other subscribers to the syndicate in on the same terms with themselves, and would manage the property for the best interests of all persons interested in the syndicate as their trustees. Melville D. Hensey in all these transactions acted as a person interested in the formation of said syndicate and as one of the agents in the organization of the syndicate and as agent for all parties concerned, and was treated as their agent by persons whom he interested in the syndicate, and in the syndicate agreement was designated "Accountant for Trustees."

All during the negotiations for and the actual organization of the syndicate, and since its organization, until your complainants recently discovered to the contrary, there was carefully and studiously concealed from your complainants the fact that Melville D. Hensey or the trustees had or would have any interests adverse to your complainants, that the real price to be paid the owner for the land was, as your complainants are informed and believe and therefore aver \$120,000 or less, and that by means of interesting your complainants in the syndicate the defendants, trustees and organizers of the syndicate would make a large profit out of your complainants and either would obtain interests in said syndicate for nothing or would obtain for no consideration and by dumping your complainants moneys from them wherewith and whereby to acquire interests in the syndicate. Your complainants have made

136 repeated efforts to learn from Messrs. Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, the defendants, and from Joseph Paul, the agent of Mrs. Amanda Dean, the price

paid the said Mrs. Dean, for the land aforesaid, but they have neglected and the two first named at a meeting of all local shareholders refused, to give your complainants any information on the subject though admitting a lesser price than \$150,000 was paid Mrs. Dean and it was only by chance complainants were able to learn what they believe was approximately the price paid. Having succeeded in effecting organization of the syndicate and having the moneys of your complainants in hand, the defendants, organizers of the syndicate, purchased said land, title being taken in the name of Melville D. Hensey and two days later by collusion among the defendants Mrssrs. Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, conveyed said land at the advanced price of \$150,000 to Thomas G. Hensey and Mellen C. Hooker as trustees for your complainants and the syndicate. Your complainants charge that in this transaction Melville D. Hensey was merely the agent or tool of the trustees Messrs. Thomas G. Hensey and Mellen C. Hooker. Your complainants on information and belief aver that by the aforesaid misrepresentation, fraud and artifice a large profit was unlawfully made by the defendant organizers of the syndicate, and trustees for the syndicate out of the other members of the syndicate, that the moneys subscribed by the syndicate shareholders, other than Thomas G. Hensey, Melville D. Hensey and Mellen C. Hooker, was the means directly or indirectly wherewith the said land was bought; that the shares of Thomas G. Hensey and Mellen C. Hooker in said syndicate do not represent value of money actually contributed to said syndicate or any consideration whatever but directly or indirectly represent part of the illegal profit they made out of said syndicate shareholders by the aforesaid misrepresentations, fraud and artifices, that in all that they did during, at the time of and since organization of the syndicate Messrs. Thomas G. Hensey, Melville D. Hensey and Mellen C. Hooker were, as your complainants are advised and believe, and therefore aver, trustees *for* your complainants and should be so declared by the court and decreed to hold the shares standing in their name as trustees for your complainants and to reimburse them for any losses your complainants may be found to have illegally suffered. Your complainants on information and belief aver that Thomas G. Hensey has eight shares in said syndicate; that two shares have been given by him to a relative; that Mellen C. Hooker has fourteen shares in said syndicate, all intact and that Melville D. Hensey has one share in said syndicate and possibly interests in other shares.

8. That said Thomas G. Hensey and Mellen C. Hooker, trustees under said deed in trust hereinbefore referred to on or about the nineteenth day of January, A. D. 1894, subdivided part of lots numbered nineteen (19), Twenty (20), and Twenty-four (24), and all of lots numbered Twenty-one (21), Twenty-two (22) and Twenty-three (23) of Amanda M. Dean's subdivision, in said Block Twelve (12), above set forth, into lots numbered Twenty-five (25) to Forty-five (45) inclusive, as per plat recorded in Liber County No. 9, folio 86, of the records of the office of the Surveyor for the District of Columbia. That on or about the first day of March, A. D. 1899, said Hensey and Hooker, trustees

as aforesaid, resubdivided said lots twenty-five (25) to Forty-five (45) inclusive, in said Block Twelve (12), into lots numbered Forty-six (46) to Sixty-five (65) inclusive, as per plat recorded in Liber County No. 12, folio 33, of the records aforesaid; the same being known as Thomas G. Henney and Mellen C. Hooker, Trustees, subdivision of lots in said Block Twelve (12).

9. That thereafter certain condemnation proceedings were instituted on behalf of the District of Columbia for the extension of Rhode Island Avenue, through "Le Droit Park" and part of said lot numbered Twenty-four (24) of Amanda M. Dean's subdivision of lots in said Block Twelve (12) was condemned and approximately 20,759.90 feet of ground in said lot was appropriated to the use of said *vaenue*, the District allowing compensation therefor in about the sum of \$20,760, as per plat recorded in Condemnation Liber No. 15, folio 5, of the records of the Surveyor's Office aforesaid. That under said condemnation proceedings certain benefits were assessed against said land aggregating as your complainants are informed and believe between ten and eleven thousand dollars.

10. That said syndicate by the terms of the aforesaid deed in trust and syndicate declaration obtained the land in fee simple subject to certain trusts or mortgages aggregating \$100,000, a part of which since then has been paid off, each shareholder becoming a tenant in common of the said land to an extent or degree proportionate to his contribution to the total syndicate's price, that is to say your complainant Charles W. Richardson having a five-one-hundredths therein by reason of payments of over \$1,400 per share on five shares, your complainant Joseph W. Little a three-and-a-half-one-hundredth interest therein by reason of similar payments; your complainant Mary B. Cummings a one-hundredth interest therein by reason of similar payments; your complainant B. Richards a one-one-hundredth interest therein by reason of similar payments; your complainant Mary A. Heinz a three-one-hundredth interest therein by reason of similar payments; your complainant George E. Esher a two-one-hundredths interest therein by reason of similar payments; your complainant Francis E. Grice a one-one-hundredth interest therein by reason of similar payments; your complainant F. H. Chittenden a one-one-hundredth interest therein by reason of similar payments therein by himself and C. L. Marlatt, your complainant Chittenden being an assignee of one-half of a one-one-hundredth interest from said Marlatt; your complainant W. A. Bevard a one-half of one-one-hundredth interest therein by reason of similar payments; your complainant Alice Titcomb a two-one-hundredths interest therein by reason of similar payments; your complainant William B. Brittain a one-one-hundredth interest therein by reason of similar payments; your complainant

Pauline Heinz a two-one-hundredths interest therein by reason of similar payments; your complainant Bernard E. Fernow a five-one-hundredths interest therein by reason of similar payments; your complainant James T. Brown a one-and-one-half-hundredths interest therein by reason of similar payments; your complainant Etta Beatty a one-one-hundredth interest therein

by reason of similar payments; your complainant Gertrude L. Chittenden a one-one-hundredth interest therein by reason of similar payments; the title to said land, however, being vested in the organizers of the syndicate, Messrs. Thomas G. Hensey and Mellen C. Hooker in and upon certain trusts and powers, namely, as trustees for your complainants with "power to sell, mortgage, lease or otherwise dispose of" the said land, but with no power to use or exploit the land for any other purpose and with no power to bind the land or your complainant's interest therein in any other manner or for any other purpose than those stated in the grant of the specific powers enumerated. That in certain ways and by certain means, including exchanges of the houses hereinafter mentioned, for shares of stock there have been turned in to the syndicate some eleven shares of stock, making 89 shares instead of 100 among which the assets of the syndicate now should be divided.

11. That after said syndicate had been in operation some years the trustees without authority in and under the deed in trust by which they held title to the land aforesaid, without permission or authority from a larger number of the shareholders in said syndicate, without the knowledge of some of them and against the protests of other shareholders proceeded upon a large, extensive, costly and extravagant project of improvement of a large part of the said land by the erection of buildings thereon. That to carry on this building project the trustees in the claimed exercise of their powers and notwithstanding the purpose of the loan was in violation of their trust proceeded to incumber the land with a large and heavy building loan, namely, a loan of \$60,000 and then proceeded to erect a class of buildings on part of said land that were extravagantly designed and far more costly than the locality justified. Furthermore, in the construction of said houses extravagance and waste was shown and due and proper business care and judgment was not exercised. That the first a number of your complainants knew of the erection of the houses was when they saw in the newspapers that their erection had begun and others of your complainants were in no position to begin costly litigation and were informed by the trustees aforesaid that the trustees had power under the agreement to act as they deemed best. That your complainants since have learned that Thomas G. Hensey was largely interest- in vacant lands in the immediate neighborhood of the syndicate property as the records of the District will show and complainants believe and therefore aver that one reason why said improvements were projected was, at your complainants' expense, to enhance the value of other vacant land in which said Hensey was interested. That the trustees began the building of 20 houses costing more than \$5,200 each to build though the original plan was to limit the cost to \$3,000 each as represented to some shareholders by letters. That they employed as architect the Melville D. Hensey defendant herein, a young man and so far as complainants are informed without sufficient experience or skill, and let the building of them to an irresponsible party, one A. N. Kellogg, who was mixed up with said Melville D. Hensey in a number of schemes and projects and before the buildings mentioned herein were finished defaulted and

fled the city. That no bond, or if so no adequate and sufficient bond, as it is customary and as it was the duty of the trustees to do, was taken from said Kellogg by the trustees for the construction of said buildings. If any bond was taken, no suit on the same ever has been entered as was the duty of said trustees and the trustees though requested to furnish and given ample time to furnish said bond to your complainants have neglected so to do. That after the default of said Kellogg the said dwellings were completed at the expense of your complainants and other members of the syndicate. The defendant Mellen C. Hooker claims to have supervised completion of said buildings and as your complainants are informed and believe charged and was paid large commissions, namely, a commission of 6% for his services though the same was in violation of his trust as complainants are advised. Your complainants have been informed and believe that large commissions also have been paid said Melville D. Hensey and said Thomas G. Hensey for alleged services in connection with the property of the syndicate, but no detailed, adequate statement of account ever has been rendered your complainants by said trustees, showing just what moneys were paid out, to whom and on what account though your complainants have requested such detailed explanations. That your complainants' attorney, Charles H. Merillat, at a meeting with the trustees requested to see the construction account, and the book showing the items of cost of the buildings erected, but though the dwellings were built three years ago, the book was not produced and he was informed by the trustees that the building or construction book had not been posted up and that it would not be intelligible to any one but the trustees, that they had approximated the cost from what data they had, vouchers etc., but that if given until the next semi-annual meeting (about next December) the trustees would fix up a detailed statement and when he then demanded to see the letters sent and received and records of the meeting when it was alleged authority was given to build he was met with evasive replies, the statement that it was Summertime and that it would take some considerable time to hunt them up and produce them. That the aforesaid buildings have been for sale for some months at Seven thousand dollars each, which price the aforesaid Thomas G. Hensey has admitted would represent no more than the alleged cost price of the buildings and ground to the shareholders and no profit or interest on their money, but the extravagance and waste in the construction of the buildings was such that none of them have been sold as your complainants are informed and believe for as much as the alleged cost price "seven thousand dollars) notwithstanding improved realty now by reason of the largely advanced cost of building material and labor is at least 25 per cent higher than when said houses were built.

140 That your complainants are informed and believe that some of the houses have been traded and exchanged and perhaps have been figured in such deals at seven thousand dollars but the same was a fictitious and not a cash price and some of the houses so exchanged have been sold by the persons taking them for six thousand dollars. That notwithstanding the houses are not over three years old your complainants are informed repairs have had to

be made on them. That the houses not sold rent for only \$35.50 per month, and as complainants believe not over three per cent. per annum of the money invested in them after taxes, commissions, repairs and other expenses are provided for, whereas the loan with the proceeds of which they were built bears interest at six per cent. per annum so that the houses have been a drain on the syndicate and recently assessments have had to be paid to meet the interest charges, expenses and commissions laid against the same by the defendant trustees.

12. That since the purchase of the land aforesaid in behalf of the syndicate there has been received some twenty thousand dollars or more from the District of Columbia for condemnation for street purposes of part of the land of said syndicate and assessments for benefit to the amount of between Ten and Eleven thousand dollars have been laid against the same. That your complainants believe a part of the money received on account of the condemnation proceedings has been applied in reduction of the loan on the property at the insistence of the holders of the mortgages or deeds of trust and against the writ of complainants' trustees who wanted to use it to erect more costly and extravagant buildings. That complainants are informed and believe the assessments for benefit laid against your complainants' property have not been paid and still remain a charge against same. That of the twenty houses erected by the defendant trustees some eleven now remain in the hands of the trustees as property belonging to your complainants and the other members of the syndicate and the other nine have been disposed of by way of trade or other process to other parties but the details of these transactions are unknown to your complainants, because though requested to furnish detailed information concerning the same the trustees never have made or given either a detailed, a satisfactory, or an intelligible account of their transactions for their *cestuis que trust* but have confined all their statements to their *cestuis que trust* to brief reports from which it is impossible to tell in detail what charges have been made and what transactions have occurred. That your complainants are informed and believe that there still remain many thousand dollars indebtedness against the property, of which all or a large part is overdue and unpaid and your complainants fear that unless speedy steps be taken by the Court to protect their interests that said interests will suffer a further depreciation and that they will be subjected to further heavy losses and that the property will be manipulated still more to the personal enrichment of the trustees and those connected with them.

13. That said Thomas G. Hensey and Mellen C. Hooker never have rendered full, correct, plain and detailed statements of accounts to your complainants and the syndicate shareholders although requested so to do. That the accounts as your complainants believe
 141 are not so kept that the items of expenditures can be readily and properly sifted, classified, verified and analyzed and their propriety, necessity and legality determined except by the aid of a skilled accountant; that said Thomas G. Hensey, the managing one of the trustees, refused to give a list of shareholders to one of

your complainants and only with great reluctance and after refusals and on threats of litigation gave such a list to another of your complainants; that shareholders when they came for information met rebuffs and refusals or evasions; that he neglected or refused to give explanations to shareholders, his *cestuis que trust*, of the administration of said trust until one of them threatened litigation and the appointment of a receiver, and had called on his co-shareholders to join him in legal proceedings; that even then said Thomas G. Hensey and Mellen C. Hooker at a meeting of shareholders refused to give any information whatsoever as to the price paid Mrs. Amanda Dean for the land, the length of time any other person held the land or any interest therein after Mrs. Amanda Dean had parted with her interest prior to its being turned over to the shareholders, and whether or not the organization of the syndicate had been initiated prior to the acquisition of any interest whatsoever in said land on the part of Melville Hensey or the trustees Thomas G. Hensey and Mellen C. Hooker or any one acting for them or either of them and likewise whether money had been received from the shareholders prior to Melville Hensey taking title to the land; that subsequent to the aforesaid shareholders' meeting, your complainant Charles W. Richardson demanded to see the books of the syndicate with his attorney and was informed that the trustees would consult their attorney first; that subsequently a meeting was arranged between the trustees and their attorney and complainant Charles W. Richardson, and his attorney, Charles H. Merillat, that after first declining, the trustees on advice of their counsel, permitted complainants' attorney to copy from the book of original shareholders *and* list of shareholders and dates of their first payments for shares; that said books is not accurate in that whereas it represents that said Charles W. Richardson and the other shareholders all made their first payments on January 14, 1893, the fact is that said Charles W. Richardson made his first payment of \$2,500 on January 12, 1893, as his check book shows and others of complainants, it is believed, likewise made their payments prior to the date named, though it does show that on the day Melville D. Hensey took title there had been paid in the full sum of \$50,000 to be paid by the syndicate for the land; that when complainants' attorney demanded to see the construction or building book he met evasive replies and the statement that it was not posted and was not in a condition where it would be intelligible to any one but if complainants gave the trustees until the next semi-annual period, some months hence, the building account would be fixed up and explained; that the trustees had only approximated the cost of the buildings in their statements to shareholders. When your complainants' attorney requested to see the original letters sent to and received from stockholders and any records or minutes by which the trustees claimed authority from a majority of the

142 shareholders to build he was put off with the statement that he would have to wait sometime and that they were in among various cases and could not be produced for some indefinite time in the future, notwithstanding complainants' attorney at the shareholders' meeting nearly two weeks before, had asked and had been prom-

ised copies of them. That complainants' attorney replied that they ought to be procurable within two hours and on July 15th gave defendant trustees two days to produce them but has been unable to obtain the same thus far. That your complainants were informed by the trustees shareholders exchanging shares for houses were allowed the amount they had paid in for their shares, but your complainant- *has* been advised by one such former shareholder that he was compelled to lose five hundred dollars on his share to make the exchange; that your complainants cannot state whether there are other such discrepancies but believe there should be a rigid scrutiny of all the trustees' accounts; that your complainants fear that unless the books, letters and records of the syndicate are required to be forthwith deposited in the registry of the Court the same, when this litigation is at issue, will have been spoliated or fixed up so as to conceal the real and true state of facts and accounts as they exist today and grievous injury will be done your complainants.

14. That your complainants as a result of the recently discovered fraud and misrepresentation of said Thomas G. Hensley, Mellen C. Hooker and Melville D. Hensley, and of the abuse by the trustees of the powers granted them, their illegal collection of fees and charges from the trust estate contrary to the trust reposed in said trustees as well as the rights of complainants, their mismanagement, extravagance, concealments and failure to keep important accounts in accessible and intelligent condition and to render accounts from which your complainants could have been apprised of the true situation of affairs have utterly lost faith and confidence in the said trustees and in their ability properly to manage said property, and complainants believe and say that the trust estate or syndicate should be wound up under the direction of this Honorable Court and a proper accounting required of the said Thomas G. Hensley and Mellen C. Hooker, as trustees and of Melville D. Hensley as agent of all parties interested in said trust estate or syndicate of all their acts and doings with reference to the aforesaid tract of land and dwellings erected thereon.

Wherefore, complainants pray as follows:

First. That process of subpoena may issue against the defendants, Thomas G. Hensley, Mellen C. Hooker and Melville D. Hensley, whom they pray may be made parties defendant hereto, commanding them and each of them to appear in this Honorable Court by a day certain, and then and there answer the premises, answer under oath being hereby expressly waived, and to stand to and abide by such order and decree as to this Honorable Court may seem meet and proper.

Second. That Mellen C. Hooker, Thomas G. Hensley and Melville D. Hensley, be compelled to discover and set forth all and singular the book or books and a full and complete list of all documents, papers or records they — have in their possession or custody
143 or under their control showing transactions relating to the land described in this bill of complaint or transactions relating to or concerning the buildings erected on said land or transactions relating to said syndicate and also all matters or transactions by and between the said Thomas G. Hensley, Mellen C. Hooker and

Melville D. Hensey and Mrs. Amanda Dean or her agent, Joseph Paul, or by and between the defendants or any or all of them, collectively or individually, so far as the same have any reference to or grew out of their relationship to the syndicate or their relationship to each or one another because of their connection with the said syndicate directly or indirectly. That Thomas G. Hensey be compelled to discover and set forth the names of the persons to whom he transferred two shares of his holdings in said syndicate, the relationship of said persons to himself, when the transfer was made, under what circumstances and the true consideration therefor. That the defendants be compelled to discover and set forth in detail all the facts and circumstances connected with the purchase from Mrs. Amanda Dean or her agent, Joseph Paul, of the land described in this bill of complaint, what was the true consideration therefor, by whom and at what date or dates any payments were made on account thereof, when and how they first learned the aforesaid land was for sale and at what price, what if any rights or interest in or refusal of said land described in this bill of complaint they or any of them had prior to actual transfer of the title to said land from Mrs. Amanda Dean, when and on what consideration the aforesaid land was bought and generally all and singular the facts in relation to the acquisition of title to said land in the name of Melville D. Hensey and the facts connected with the same.

Third. That the said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey be compelled to deposit in the Registry of the Court all the books, papers, accounts, vouchers, records or other papers of the said trust estate or syndicate herein referred to, except only the rent book, to await the further order of the Court.

Fourth. That the said defendants, Thomas G. Hensey and Mellen C. Hooker, may be required to disclose what persons are interested in said trust estate or syndicate, what that interest is, and what shares have been disposed of since the original organization of the syndicate, the dates on which they were disposed of, to whom and upon what consideration.

Fifth. That pending this suit a receiver may be appointed by this Court to take charge of all the property and assets of every nature and description belonging to the said trust estate or syndicate and hold the same subject to the order of this Court.

Sixth. That the said Thomas G. Hensey and Mellen C. Hooker, and each of them, be enjoined, pending this suit; and perpetually thereafter, from taking any further steps as trustee in and about the management of said property and said assets of said trust estate or syndicate as hereinbefore set forth or from disposing of or encumbering any of said property or real estate belonging to said trust estate or syndicate and now standing in their names or in their possession.

Seventh. That pending an accounting the said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey may be restrained
144 and enjoined from hypothecating, mortgaging, selling or disposing of, or placing beyond the jurisdiction of this Court, such certificates of interest or shareholdings as they or each of them may now have or hold in said trust or syndicate, and if necessary be

required to deposit the same in the registry of the Court, the same to be held and disposed of by the further order of the Court.

Eig-th. That the said Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, and each of them be required to account to your complainants and other persons in like situation for the difference between the actual cost of said tract of land and the amount charged the syndicate therefore, namely \$150,000.

Ninth. That an account may be taken under the direction of the Court of all the acts and doings of said Hensey and Hooker or as trustees as aforesaid and that the said trust estate of syndicate may be wound up under the direction of this Court and such orders and decrees made as will establish and enforce the rights of each of the persons interested.

Tenth. That Thomas G. Hensey and Mellen C. Hooker be removed as trustees of said trust estate or syndicate and that the Court appoint other trustees in their stead or make such other order or decree in this regard as to it may seem meet and proper.

Eleventh. And for such other and further relief as to the Court may seem meet and proper.

CHARLES W. RICHARDSON.
JOSEPH W. LITTLE.
MARY D. CUMMINGS.
W. A. BEVARD.
F. H. CHITTENDEN.
FRANCIS E. GRICE.
B. RICHARDS.
GEORGE C. ESHER.
MARY A. HEINZ.
ALICE TITCOMB.
WILLIAM B. BRITTAIN.

CHAS. H. MERILLAT,
MASON N. RICHARDSON,
EUGENE CARUSI,
Solicitors for Compl'ts.

I do solemnly swear that I have read the foregoing bill by me subscribed, and knew the contents thereof, and that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

CHARLES W. RICHARDSON.

Sworn and subscribed to before me this 18th day of July A. D. 1903.

[SEAL.]

WALTER C. BALDERSTON,
Notary Public, D. of C.

145 The following are the Docket entries in Equity cause No. 24,084 showing service of summons on the defendants in said cause:

1903 July 18, Bill—exhibits (3)—appearance—order to file—Filed
“ “ “ “ Spa. to ans. & copies (3) to Defts all (3) issued.
* * * * *
“ “ 29 S to ans.—Ret'd—served Defts—all (3)

(Filed Aug. 20, 1903, J. R. Young, Clerk.)

In the Supreme Court of the District of Columbia, Sitting in Equity.

Eq. No. 24,084.

CHARLES W. RICHARDSON et al.

vs.

THOMAS G. HENSEY et al.

Come now their complainants by their Attorney Charles H. Merillat and amend their bill of complaint as follows:

After paragraph twelve, page twenty of the complainants' bill of complaint, insert the following as a new paragraph:

12½. That on information and belief complainants allege that
by means of the frauds herein referred to large sums of
146 money have been illegally and wrongfully obtained by the
defendants aforesaid Thomas G. Hensey, Mellen C. Hooker
and Melville D. Hensey from your complainants and others similarly
situated for whom they were trustees and agents, and have been
and still are by them withheld from your complainants, and com-
plainants on information and belief allege that all or a large part of
the money thus wrongfully, and illegally obtained by said defen-
dants as your complainants trustees and agents were used in whole
or in part by said defendants in the purchase of certain real estate
and interests in real estate in the District of Columbia and title
thereto taken in their own names and it now stands in their own
name or names, the aforesaid real estate being more particularly
described as follows:

The south thirty-two (32) feet of original lot eighteen in square
1,110 in the City of Washington, District of Columbia, title thereto
being taken in fee in the name of Mellen C. Hooper by conveyance
from Charles E. Deimer by deed in fee dated April 18, 1893, and
recorded March 29, 1894, in Liber 1908, folio 28 et seq of the land
records of the District of Columbia.

Part of original Lot 12, in Block 7 in the Howard University's
subdivision of the farm of John A. Smith as Effingham place, begin-
ning at the southwest corner of said lot on Sumner street, thence
running north 20 feet, thence east 50 feet, thence south 20 feet,
thence west 50 feet to the place of beginning, title to the same being
taken in fee in the name of Mellen C. Hooker from Gordon P.
Hooker by deed in fee dated June 13, 1894, and recorded February
8, 1896, in Liber 2092, folio 299 et seq of the land records
147 of the District of Columbia.

A tract of land known as "Dry Meadows" in the County
of Washington, District of Columbia, beginning for the same at a
stone marking corner of the late Charles R. Belts land and running
thence with 41¾ due east 57.84 perches to a stone, thence north 44
degrees, east 13.66 perches to a stone on Broad Branch Road, thence
15½ degrees west 58.12 perches to Jones' line, thence north 60
degrees west 2.32 perches to a stone and place of beginning, con-

taining 9.40 acres of land more or less, title to the same being taken in the name of Thomas G. Hensey and Melville D. Hensey as joint tenants and in trust for contributors to the purchase price thereof by deed dated January 13, 1893, and recorded February 28, 1894, in Liber 1891, folio 184 et seq of the land records of the District of Columbia.

Lot No. 13 in Loomis' subdivision of Square 65 as recorded in Book "W. F." page 35 of the surveyors office of the District of Columbia, title to the same being taken in the name of Thomas G. Hensey by deed in fee from Benjamin J. Edwards et ux dated November 7, 1895, recorded November 15, 1895, in Liber 2072, folio 42 et seq of the land records of the District of Columbia, the same being subject to a deed of trust for \$2,000, dated August 28, 1899, and recorded in the Liber 2428, folio 243 of the land records of the District of Columbia, made by Thomas G. Hensey et ux to Blair and Howard trustees.

148 Lot 51 in Square 520 in the City of Washington, District of Columbia, as per the recorded plat of Jesse D. Gibb's subdivision of said square, title to the same being taken in the name of Thomas G. Hensey by deed from Benjamin J. Edwards et ux dated January 9, 1896, and recorded January 16, 1896, in Liber 2098, folio 36, the same being subject to certain deed in trust dated January 17, 1903, from Thomas G. Hensey et ux to Charles E. Benjamin and William H. Duncanson trustees to secure the payment of \$2,000 to the Perpetual Building Association.

All of Lot 19 in Section No. 3 of the Barry Farm Estate, according to the subdivision made by the Trustee thereof is recorded in the office of the surveyor of the District of Columbia, Book Levy Court No. 2, page 1, except that part of said lot conveyed by a deed from Lucy Stevenson to Catherine Tills, dated April 18th, 1888, and recorded in Liber 1333, folio 425 et seq of the land records of the District of Columbia, and title to which was taken in the name of Thomas G. Hensey by deed in fee from Fountain Peyton et ux dated May 16, 1893, and recorded May 17, 1893, in Liber 1818, folio 192 of the land records of the District of Columbia.

The interest held in the name of, or for, or on behalf of, either, any or all of the defendants in part of a whole tract of land called Grassland and being designated as lot 11 on a sale map thereof made by Templeman and Shipley and described as follows: Beginning for said lot numbered 11 at the northeasterly corner of the portion of Grassland which lies northwesterly of the County Road known as Loughborough Lane, thence running along the northwesterly boundary of said portion of Grassland south forty-seven and three-fourth degrees west thirty-two and three-fourths
149 perches, to the northwesterly corner of lot ten as designated on said map, thence south forty degrees, east and along the northeasterly boundary line of said lot ten one hundred and two and six-tenths perches to the centre of said road; thence along the centre of said road north forty-five and one-fourth degrees east nineteen and one-half perches to the northwesterly boundary line of said portion of Grassland; thence leaving said road and running along

said boundary line north forty and three-fourths degrees west 97 perches to the beginning, containing 20 acres, 3 rods and 20 perches, except, however, the 9 acres, 2 rods and 33 perches conveyed to Richard W. Carter on June 2, 1870, by deed recorded in Liber 616, folio 268, and being the same parcel of land conveyed to Curtis Dangler on February 13, 1872, by deed recorded in Liber 672, folio 211, and also the same conveyed by John C. O'Donoghue to said Arthur T. Goldsborough by deed dated on the 25th day of February, 1890, and recorded in Liber 1472, folio 129, excepting therefrom, however, the portion thereof released from the operation of said deed of trust by the said recited release dated March 3, 1894, and recorded in Liber 1900, folio 80, title to the aforesaid tract being taken in the name of Thomas G. Hensey, Walter A. Brown and Alexander K. Phillips, by deed in trust for the benefit of persons contributing the purchase money for said tract from Wm. A. Gordon and J. Holdsworth Gordon, trustees dated October 30, 1897, and recorded November 27, 1897, in Liber 2273, folio 151, the same being subject to a deed of trust dated November 11, 1897, from Hensey, Brown and Phillips trustees to Gordon and Nixon trustees to secure Albert Baker \$21,844.73 recorded November 27, 150 1897, Liber 2273, folio 154 of the land records of the District of Columbia.

The interest held in the name of or for or on behalf of either, any or all of the defendants in Lot 55 in Hensey and Hooker, trustees, subdivision of Block 12, in LeDroit Park as per plat recorded in Liber 12, folio 33 of the records of the office of the Surveyor of the District of Columbia, the same being taken in the name of Thomas G. Hensey and Mellen C. Hooker as trustees for the District Investment Company by deed dated July 6, 1901, and recorded July 11, 1901, in Liber 2555, folio 361, of the land records of the District of Columbia.

The interests acquired, or for or on account of which payments have been made since January 14, 1893, by or for or on behalf of either, any or all of the defendants in property held in the name of Thomas G. Hensey and Mellen C. Hooker as trustees for the District Investment Company, which said property and interests your complainants are unable more particularly to describe, but which said property and interests is well known to said Thomas G. Hensey and Mellen C. Hooker.

And complainants are advised and therefore aver that to the extent to which said money of your complainants and others similarly situated was thus used as aforesaid the said defendants Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, any, either or all of them, hold the aforesaid real estate, interests in real estate and property for your complainants and other shareholders similarly situated;

151 After prayer fourth page 25 of complainants bill of complaint, insert the following additional prayers:

Prayers.

Fourth and one quarter, That the said Thomas G. Hensey, Mel-
len C. Hooker and Melville D. Hensey be compelled to set forth and
discover what interests they, either, any or all of them, have in the
land and property described in paragraph 12½ of this bill of com-
plaint, and in the District Investment Company, when and how they
acquired the same, what indebtedness there is on the same, and on
each and every part thereof and by whom held, how and when
they acquired their interests in the same and in each and every
part thereof and whence came the money with which they acquired
their interests in the same.

Four and one-half, That the defendants be enjoined and re-
strained from disposing of any or all of their interests in the real
estate or other property described in paragraph twelve of complain-
ants' bill of complaint, or their interests in the District of Columbia
Investment Company pending this suit of and perpetually there-
after;

Four and three-quarters, That a trust may be appointed to sell
the interests of the defendants and of each of them in the real estate
or property described in paragraph twelve of complainants' bill of
complaint and in the District Investment Company, and to hold
the same subject to further order of the court for the benefit of your
complainants and other shareholders similarly situated.

JOSEPH W. LITTLE.

CHARLES H. MERILLAT,
EUGENE CARUSI,
MASON N. RICHARDSON,
Solicitors for Complainants.

152 Joseph W. Little being first duly sworn, deposes and says:

That he is one of the complainants in the above entitled cause,
that he has read the above amendments to complainants' bill of com-
plaint, that the facts therein stated of his own personal knowledge
are true and those stated upon information and belief he believes
to be true.

[NOTARIAL SEAL.]

JOSEPH W. LITTLE.

Subscribed and sworn to before me this 20th day of August, A. D.
1903.

WALTER C. BALDERSTON,
Notary Public, District of Columbia.

Service acknowledged this 20th day of August, 1903.

(Signed)

A. B. DUVALL, *Sol'r.*

The following is taken from the original record of testimony filed
in Equity cause No. 24,084, in the Supreme Court of the District of
Columbia, and is to show the first three dates of testimony taken in
that cause.

WASHINGTON, D. C., *October 24th, 1903—Saturday at 1 o'clock P. M.*

Met pursuant to the annexed notice at the law offices of Charles H. Merillat, Esq., 458 Louisiana Avenue, Northwest, for the purpose of taking testimony for and on behalf of the complainants in this cause:

Present: Messrs. Mason N. Richardson and Charles H. Merillat, on behalf of the complainants; A. B. Duvall, Esq., on behalf of Thomas G. Hensey, Esq., one of the defendants; E. H. Thomas, Esq., on behalf of the defendant, Melville D. Hensey; Judge John J. Weed on behalf of the defendant Mellen C. Hooker; Edwin L. Wilson, Esq.; Examiner; the defendants, Thomas G. Hensey, Melville D. Hensey and Mellen C. Hooker, in person; and witnesses.

WASHINGTON, D. C., *October 28, 1903, 2 o'clock P. M.*

Met pursuant to adjournment at the law offices of Charles H. Merillat, Esq., 458 Louisiana Avenue, Northwest, for the purpose of taking additional testimony on behalf of complainants.

Present: Messrs. Mason N. Richardson and Charles H. Merillat, on behalf of the complainants; Messrs. A. B. Duvall, E. H. Thomas and John J. Weed, on behalf of the defendants; the defendants, Thomas G. Hensey, Melville D. Hensey and Mellen C. Hooker, in person; Edwin L. Wilson, Examiner, and witnesses.

WASHINGTON, D. C., *October 31st, 1903—1 o'clock P. M.*

Met pursuant to adjournment at the law offices of Charles H. Merillat, Esq., 358 Louisiana Avenue, Northwest, for the purpose of taking additional testimony for and on behalf of the complainants.

Present: Messrs. M. N. Richardson and C. H. Merillat, on behalf of the complainants; Messrs. A. B. Duvall, E. H. Thomas and John J. Weed, on behalf of certain defendants under the original bill; C. T. Hendler, Esq., on behalf of the defendant, E. S. Kimball; the defendants in person, Thomas G. Hensey and Melville Hensey; Edwin L. Wilson, Examiner, and witnesses.

* * * * *

In the Supreme Court of the District of Columbia, Holding an Equity Court for Said District.

Equity. No. 24,084.

CHARLES W. RICHARDSON et al.

vs.

THOMAS G. HENSEY et al.

Upon consideration of the motion to amend paragraph nine of the decree in this cause, in respect of a clerical error in the description of the tract of land called "Dry Meadows," appearing upon the

face of the record, it is by the Court this 25th day of October, 1907, ordered that said ninth paragraph be and the same is hereby amended now for the date of said decree so that said description shall read as follows: Beginning for the same at a stone, a corner of the late Charles R. Belts' land and running thence south $41\frac{3}{4}$ degrees east 57.84 perches to a stone; thence north 44 degrees, east 13.68 perches to a stone on Broad Branch Road, thence north $15\frac{1}{2}$ degrees west 58.12 perches to Jones' line; thence north 60 degrees, west, 2.32 perches to a stone, and thence south $50\frac{3}{4}$ degrees west 35 perches to the place of beginning, containing 9.40 acres of land, more or less, being the same property conveyed to Thomas G. Hensey and Melville D. Hensey, trustees, by deed dated January 13, 1893, and recorded February 28, 1894, in liber 1891, folio 184, et seq., of the land records of the District of Columbia.

By the Court:

ASHLEY M. GOULD, *Justice.*

This indenture, made this 19th day of May, A. D. 1906, by and between Thos. G. Hensey and Melville D. Hensey, Trustees, in trust, under a deed in trust dated on the 13th day of February 1891, of Washington, District of Columbia, parties of the first part, and Charles W. Stevens of Nashua, N. H., Leonard H. Dyer, of New York, Helen M. Soule, of Washington, D. C., Annie Holmes of Washington, D. C., Lyman D. Landon of Washington, D. C., and Susan V. Kimberly of Washington, D. C. parties of the second part, witnesseth that for and in consideration of the respective interests of the parties of the second part, heretofore held as shareholders and under declaration in trust, and shares held on collateral notes, showing the following interests to Charles W. Stevens, one tenth undivided interest, to Leonard H. Dyer, one tenth undivided interest, to Helen M.

156 Soule, one-tenth undivided interest, to Annie Holmes, one tenth undivided interest, to Lyman D. Landon, three tenths undivided interest, to Susan V. Kimberly, three tenths undivided interest, in consideration of the interests hereinbefore described, and for the purpose of securing said parties individually in their holdings, the consideration therefore having been given before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold enfeoffed, released and conveyed, and do by these presents bargain, sell, alien, enfeoff, release and convey unto the parties of the second part, their heirs or assigns, as tenants in common, forever the following described real estate, situate in the County of Washington, District of Columbia, to wit: part of the tract of land in the County of Washington, in the District of Columbia known as "Dry Meadows", beginning for the same at a stone and corner of the late Charles R. Belt's land and running thence South, $41\frac{3}{4}$ degrees East 57.84 perches to a stone; thence North 44 degrees East 13.68 perches to a Stone on Broad Branch Road; thence North $15\frac{1}{2}$ degrees West 58.12 perches to Jones' line; thence North 60 degrees West 2.32 perches to a stone and thence South $50\frac{3}{4}$ degrees West, 38 perches to the place of beginning, containing 9.40 acres of land more or less, together with the improvements, rights, privileges, and appurtenances,

to the same belonging, and the said parties of the first part covenant that they will warrant specially the property hereby conveyed; that they are seized of the land hereby conveyed; that they have a right to convey said land; that the said parties of the second part shall quietly enjoy said land; that they have done no act to
 157 encumber said land, and that they will execute such further assurances of said land as may be requested.

Witness our hands and seals the day and year hereinbefore written.

THOS. G. HENSEY. [SEAL.]
 MELVILLE D. HENSEY. [SEAL.]

In presence of
 E. E. RAMEY.

DISTRICT OF COLUMBIA, *To wit:*

I, E. E. Ramey a Notary Public in and for the District of Columbia, do hereby certify that Thos. G. Hensey and Melville D. Hensey Trustees in trust under a deed in trust, parties to a certain deed bearing date on the 19th day of May A. D. 1906, and hereto annexed, personally appeared before me in said District, the said Thos. G. Hensey and Melville D. Hensey being personally well known to me as the persons who executed the said deed, and acknowledged the same to be their act and deed.

Given under my hand and seal this 21st day of May 1906.

[NOTARIAL SEAL.]

E. E. RAMEY. [SEAL.]

Recorded May 21, A. D. 1906, 11.55 A. M. in the Office recorder of deeds, in Liber 3003, folio 447 et seq.

Deed delivered June 9, 1908 to Thos. G. Hensey, R. R.

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Equity 26396.

WASHINGTON, D. C., *June 27, 1908.*

Met pursuant to adjournment at the law offices of Mason N. Richardson, Esq., Fendall Building, for the purpose of taking additional testimony on behalf of the complainants.

Present: Messrs. Charles H. Merillat and Mason N. Richardson on behalf of the complainants; Mr. William Henry White on behalf of certain defendants; Examiner and witnesses.

Whereupon JAMES L. KARRICK, produced as a witness on behalf of the complainants, and being duly sworn, testified as follows:

By Mr. MERILLAT:

Q. Please state your full name and relationship, if any, to Lyman D. Landon. A. James L. Karrick is my full name. I am in the real estate business, storage business and banking business. I am personally no relation of Mr. Landon, but my wife is a relation of Mr. Landon.

Q. What is the condition of Mr. Landon's health and what has been his condition for the last two years? A. Well, he is now in a

very feeble condition both mentally and physically, and in the last two years he has been constantly growing worse.

159 Q. What was his mental condition two years ago? A.

Well, at times two years ago he was very foggy in his mind. I do not know just how to express it. He was forgetful and his recollection was very hazy at different times. At times he was better. Not only that—in fact within six months sometimes he was much clearer than he is at other times, but in the last six months it has been very seldom that you could get to know what he was talking about.

Q. I will ask you this: Have you had charge of Mr. Landon's business affairs and looking after his interests, and, if so, over what period of time? A. I have not had charge of them perhaps longer than—not full charge of them perhaps six months, but I should say something over a year he has consulted me I think in everything he has attempted to do. He has consulted me about his affairs for the last eight or nine years pretty generally. Not in every case.

Q. Mr. Karrick, did Mr. Landon consult you about his affairs as long ago as the year 1900? A. Yes, sir, to a certain extent. Not as fully in those days as he has later.

Q. In or about the year 1900 did he consult with you regarding any claim that he had against Thomas G. Hensey? A. Yes, sir. I think the first time was in 1899, if I remember right, was when he first talked to me—he first told me he had the claim.

Q. What did he say at that time? A. That is almost a repetition, as near as I can recall it, of the testimony I gave the other days.

That is the way it happened. He happened to get talking to
160 me then about his affairs and so on and he expected to go in a business matter—in a building operation and he said he expected to get five or six thousand dollars shortly and when he did so he would go into this venture with me.

Q. This you think was in 1899? A. That was in 1899.

Q. Did he say that this five or six thousand dollars was money that Thomas G. Hensey owed him—was the amount that Thomas G. Hensey owed him? A. He said that Hensey owed that amount of money and expected to get a settlement.

Q. That was the total amount, as you understood it, in which Hensey was indebted to him? A. He did not go into the particulars that way. My recollection was that it was five or six thousand dollars that he expected to get from Hensey. Whether Hensey owed him—I don't think he owed him more than that—I don't think he went into that. In the beginning I did talk with him about the amount of his indebtedness.

Q. Mr. Karrick, did Mr. Landon have a bank account or bank accounts and, if so, in what bank or banks? A. At that time I knew nothing about it, but afterwards I did find out he had his bank account in the Bank of Washington, or rather it was the Central National Bank and it was afterwards consolidated with the bank of Washington. That is the bank, as far as I know, that he did all his banking business up to within the last year or so.

Q. Did he do any banking of any kind or have an account
161 or accounts in any other bank than that one prior to the last
year? A. Not to my knowledge.

Q. Did he have any individual deposits in any banks or
trust companies or anything of that kind—individual transactions?
A. Prior to a year ago?

Q. Yes, sir. A. Not to my knowledge. He told me—in fact he
has talked this over several times about trust funds that he has had
where friends, mostly from Plattsburg and Burlington, Vermont,
where he was brought up as a young man, invested money through
him. There were quite a number of these people. He told me that
that was part of the money that Hensey owed him where he de-
posited money with Hensey and Hensey was—as I understand, this
was previous to 1899. His understanding had been to deposit these
sums with Hensey and from time to time Hensey would make a loan
and would deliver the notes to him and he would send them on to
his friends.

Q. So, as I understand it, then, he was sort of a fiscal agent for
people away from here, and as such fiscal agent for people away from
here he would put the money in Hensey's hands and have Hensey
invest it in real estate security? A. That is the way I understood it.

Q. Did he keep these funds, so far as you know, in any place of
special deposit? A. I think, as I understand it, that he deposited
it right with Mr. Hensey. When he got a check he turned the check
over to Mr. Hensey and let him credit it on his books.

162 Q. Did he mention any amounts that he had put in Hen-
sey's hands? A. He did one or two times, but I have found
no record and I cannot recall now. There were people in Platts-
burg—that was an amount of seven hundred dollars—there is an
amount that is now outstanding. All these have been settled up ex-
cept the seven hundred dollars, and that was done through D. D.
Thompson. I find it was not done through Hensey. As he began
to get feeble he got rid of his matters as he could. He has gotten
rid of them all except this one of Mrs. Thomas of seven hundred dol-
lars. That I am quite sure never went through Hensey's hands.
As far as I have been able to find out it went through D. D. Thomp-
son.

Q. Do you know whether or not he was in the habit of drawing
checks and entering them in the check stub book, or entering on the
stubs anything with relation to these transactions? A. I do not
know anything about that. I have never been able to find out any-
thing about his affairs. I never searched for checks or check stub
books any more than you looked over that, Mr. White. Those were
all the papers I found.

Q. Do you know whether or not he has a current bank book with
the Central National Bank? A. He has one with the Central Na-
tional Bank of just a very late date which I have in my office. I did
not give that to Mr. White because it only shows a balance of about
thirty dollars.

163 Q. Do you know when that began? The date of that?
A. It began within the last four years or two years. It is a

very late book. I did not bring it down because we are using it up there.

Q. The Central National Bank book which you gave to Mr. White deals with transactions from about 1884 up to about 1897 or 1898?

Mr. WHITE: 1899.

Mr. MERILLAT: I will change it. Make it read 1899. I will give the last date 1899.

By Mr. MERILLAT:

Q. Do you know what became of the bank book from 1899 on?

A. No, sir, I never found anything except those books which you know about—the pass book which I have—the very late book. I think that is within a year, or two years I should say for certain.

Q. Have you seen any of his checks? A. No, sir, never found any checks except only one or two. I can recall only one or two very late ones that were just made payable to self for twenty-five dollars or something of that kind.

Q. You have not found any of his check stub books? A. No, sir.

Q. Is it not a fact that among the papers of Mr. Landon you found quite a large number of papers, including receipts of one kind or another, tax bills and miscellaneous papers; old deeds
164 and things of that sort? A. Yes, sir.

Q. Do they appear not to have been carefully preserved? That is, put in jackets and that sort of thing? A. Yes, sir.

Q. And you are unable to discover, as I understand, any of the bank books or bank papers that would throw light on his transactions between 1899 and 1905. Is that true? A. You mean any of those bills—tax bills and things of that kind?

Q. No, sir; I mean any bank books or memorandum books. A. as far as I have been able to find those tax bills and receipts they came through either D. D. Thompson or Thomas G. Hensey and they paid all those bills, as I understand it.

Q. I am referring now to the matters that were prior to 1899; did you not discover a number of packages of papers carefully preserved relating to transactions prior to 1899? A. Yes, sir; but as I understand even prior to 1899 these bills were paid by either Thompson or Hensey. As far as I have been able to find he never paid any tax bills or checks or agents. He was very peculiar that way. He seemed to do all of his business through some agent.

Q. I was referring to deeds and other papers that apparently had been in his possession. A. I think more than—Well, I do not quite understand your question. You mean there would not be any check
165 represented by the deed, except the bill for record the deed and merely the costs. Well, I did not find all of them paid that way, but I found that they were paid by Thompson and Hensey—the bill for recording or the fee for releasing and things of that sort.

Q. You did find his bank deposit book for a period antedating 1899? A. This you had.

Q. But any bank book from 1899 up to a comparatively short time—a year ago? A. I did not look over the dates very carefully.

You have all the books I have found. I was under the impression that those books went to a later date than 1899. I am not sure. You have looked them over more carefully than I have.

Q. Well, produce them and we will look over the dates. A. You have looked over them more carefully than I have.

Q. Is it not a fact that in 1903 Mr. Thomas G. Hensey transferred to Mr. Landon several pieces of property out in Maryland?

Mr. WHITE: I object to the question as leading and not the best evidence of any transfers of property, and as being immaterial.

Mr. MERILLAT: The witness himself not being here, he being unable to come under the circumstances, we will ask the Examiner to re-ask the question.

(Hereupon the question was read to the witness by the Examiner.)

166 WITNESS: I understand the question is objected to.

Mr. WHITE: You can answer it. Go ahead.

A. All I know is by referring to the papers.

Q. Do you know whether or not he transferred to Mr. Landon his interest in some syndicates? A. Yes, sir; judging from the papers.

Q. Do you know when that was?

Mr. WHITE: I object to that as not being the best evidence.

A. What is the question?

Q. Do you know when that was? A. I would not know without looking on the papers. My recollection is not good on that. I have not looked them over for such a long time I could not recall the dates.

By Mr. WHITE:

Q. You mean the papers which you gave to me? A. Yes, sir.

By Mr. MERILLAT:

Q. Are you willing, Mr. Karrick, that we should examine these papers—your only knowledge being from the papers themselves—with the view that we may put the same in evidence? A. Yes, sir.

Q. Have you any personal knowledge of transfers or payments by Hensey other than what might be indicated in those papers? A. Well, only—do not forget this thousand dollar note which Landon endorsed for Hensey and Hensey made payments on that as
167 I testified to in the other meeting. I recall that. Then I found one paper here—that might be understood—that was in another place. I did not know of that when I gave the papers to Mr. White. That is a Hensey note for \$55.00, dated 1906, is it not? That has never been paid.

Mr. MERILLAT: We do not desire to offer that in evidence.

WITNESS: It might throw some light. Transactions were pending all the time. It shows something was being done.

Q. Do you know whether or not as a matter of fact Mr. Landon in the last few years of his life, to some extent at least, acted as agent for Thomas G. Hensey in collecting money on notes that were owing

by various persons to Thomas G. Hensey or Thomas G. Hensey and Company? A. No, sir. These notes that you have seen, as far as I know—I know that represented money loaned by Mr. Landon to fellow-employees in the Pension Office almost without exception. I do not recall of any case otherwise. I have got quite a number of notes now I am trying to collect money on. Many of them have been renewed and partly paid. I am trying to collect them now. They are personal loans by him. Almost all of them are employees in the Pension Office.

Q. You have no knowledge, then, of his acting for Hensey in the collection of money that was borrowed from Hensey? A. No, sir, I never have seen any indication of that or heard anything of that kind. Why here is a thing that I can tell. It is not
168 within my own knowledge. I have only got an intimation. I do not know whether I ought to tell it or not. He had one, or two, houses I know he owned since 1901, and they had been sold and I have always understood that they were sold through Hensey's office.

By Mr. WHITE:

Q. You mean Hensey sold them. A. Yes, sir, I mean Landon sold them through Hensey's office.

By Mr. MERILLAT:

Q. Do you know whether or not a house on Florida Avenue between 5th and 6th streets was acquired by Landon from Hensey—being transferred by Hensey to Landon? A. I do not know. I have inquired and tried to find out from the old gentleman what he did with that house and I cannot find out. I do not know whether he lost it under foreclosure or not. If he sold it I tried to find out what became of the fund. He cannot remember how he got it or what became of it. I have tried repeatedly to find out about that house. It has only been within a year or two that he paid insurance on it, but he hasn't title to it now.

Q. Have you any knowledge with respect to a note payable by Melville D. Hensey apparently to the Commercial National Bank and notices regarding interest which were among the papers that Mr. Landon had—what that represents? A. I am not positive. I know this, among other loans to him, was one of five hundred dollars
169 on a block of houses that young Melville D. Hensey was building. Those houses were built about—well, they were built about 1901, or somewhere in that neighborhood. I cannot recall the exact year. I cannot recall the exact street now, but it is between Sherman Avenue and 11th street. I know the block, but I cannot recall the streets.

Q. I think that was formerly called Dartmouth street. A. That is the street it used to be—Dartmouth street. He loaned Melville Hensey on one of those houses. This may throw a little light on the Florida Avenue house. I used to drive him around in my buggy. He asked me to drive him out to look at different properties he was interested in. At one time he wanted me to drive him up to

this house on Florida Avenue. He said, "I am interested in one of these houses. I loaned some money on it." I asked him if it was a first trust or a second trust on that house that he had. I cannot recall the answer he gave me, whether it was a first trust of one note or one note of several notes under a first trust. My recollection is the amount was five hundred dollars on that. Whether it was one note of several under a first trust or whether it was five hundred dollars under a second trust I cannot now remember. I have asked him about that and whether it was through that five hundred dollars that he acquired that house I do not know, but it seems to me he was constantly changing off and on. He would make these loans and then perhaps take an equity in these houses for that. He seemed to be making transfers a great deal of the time with Melville Hensey or Thomas G. Hensey. I do not know who owned the property.

170 Q. Now, as you understand it, about 1901 they had a settlement of all their affairs? A. So I understand; yes, sir, at that time, but whether there were some other affairs later—I questioned him whether when he sold—he had a house in the northeast section of the city. I cannot name the exact location, but it is north of H street and over beyond the station, about perhaps at 5th street, or somewhere along in there, northeast. I asked him about that property and he said he sold it. I tried to find out to whom he sold it and what he got for it, but he cannot seem to remember anything about it or what became of that house. I think he told me that Hensey sold that house for him. That must have been later than 1901, because it was, I think, about that time that he told me that he owned that house, or owned an equity in it. I think there was a mortgage on it.

Q. These matters, then, would pass through Hensey's office? A. Evidently so; yes, sir.

Q. Hensey acting as agent? A. As I understand it, all these different properties that were sold were sold by Hensey.

Q. When he put money in Mr. Hensey's office for other people who were away from here Hensey would at times pay those off. Isn't that correct? A. As I understand, giving him security and then he would be charged with that security.

Q. The person to whom Hensey, acting for Mr. Landon, 171 had made a loan would at times take up and pay off the indebtedness? A. That I have no knowledge of. I do not know whether any of them have ever been paid or not.

Q. Do you know whether Mr. Landon had pretty generally cleaned up the matters of people for whom he was agent from away from here? I mean the Plattsburg people? A. I know he has all but one cleaned up. He sent them on the securities and told them they must get somebody else here to act for them because he was too feeble to attend to it.

Q. The amount of the only item of that kind remaining is about seven hundred dollars, which you are attending to? A. Yes, sir.

Q. Was it not Mr. Landon's custom to keep a small memorandum book in which there would be entered up a contemporaneous record.

of his several transactions? A. I never saw anything except what I delivered to Mr. White and I presume you have seen that.

Q. Mr. Hensey and Mr. Landon were very intimate and had been for years, were they not? A. I understand so; yes, sir.

Q. And so continued until Mr. Hensey's death? A. I don't think it was so much after Mr. Landon got feeble, but I understand they had a great deal of business together all the time.

Q. As I understand it, Mr. Landon has transferred his interest in Dry Meadows and in several of these syndicates and other
172 properties that he has had to yourself, or to yourself and some one else? A. To his brother and to my wife.

Q. And that is in consideration of a life annuity of \$75.00 a month to himself? A. Yes, sir.

Q. How long ago was that made, Mr. Karrick? A. I should say about six months ago. Perhaps a little less than that. Yes, sir, from four to six months ago.

Cross-examination.

By Mr. WHITE:

Q. Mr. Karrick, what relation is your wife to Mr. Landon? A. I think she is a second cousin. My wife's mother and Mr. Landon were first cousins.

Q. What was the occasion of this transfer of his interests in these properties and the giving of the annuity? A. Why it was done to give Mr. Landon a monthly income and something to live on. He had no income after he was forced to leave the Pension Office where he had formerly gotten a salary, and he was very much distressed about what he was going to live on and how he would be able to pay taxes on this vacant property.

Q. The property which he had an interest in then had no income or at least no net income? A. It had no net income. The house
173 at No. 227 D street just barely pays. There is almost no equity in it. I have had an offer of \$250.00 for the equity and we think we will take it. It is house number 227 D street. In the last six months the income from it was \$7.00—the net income. And that is liable to be wiped out at any time by repairs. It is very much out of repair.

Q. Was Mr. Landon's physical and mental condition the cause of his leaving the Pension Office? A. Yes, sir. As I understand it he is still on the pay rolls now as a matter of courtesy. He receives no pay. If he ever gets better he can go back, but he will never be able to go to work again.

Q. Would he be able to testify if he were brought down here? A. I do not believe he would. There are times when his mind is clearer than at other times. It is possible that you might strike him at a time when his mind is lucid, but lately I have not been able to get any information from him. It does not seem to be worth while. He would contradict himself within five minutes. If you asked him one question in one form and then asked him the same question in another form it would be entirely different.

Redirect examination.

By Mr. MERILLAT:

Q. Do you know, Mr. Karrick, whether or not it is not a fact that he worked at the Pension Office in the last half of 1907? A.
174 I think he did a little. Yes, sir, I think he went down there, but he sent—his friends—they urged him as long ago as three years to resign from the office because he was hurting himself to remain there, and they only kept him, because he had been there so long, as a matter of courtesy, and they did not like to discharge him because it would hurt his feelings. He has not been under pay. The last time he drew any pay he only drew five or ten dollars. They do not pay the clerks when they are not there.

JAMES L. KARRICK.

Subscribed and signed for the witness by me by consent and agreement of counsel, this 27 day of October 1908.

EDWIN L. WILSON, *Examiner*.

Mr. MERILLAT: We desire to offer in evidence the docket entries of equity cause 24,084 down to and including the filing of the answers by the several defendants to that cause, and also desire to offer in evidence the answer of Thomas G. Hensey, setting forth in the record especially paragraph 12½ which deals with Dry Meadows, it being the only paragraph pertaining to this matter.

Mr. WHITE: I object to this for the reasons heretofore made to the introduction of records in equity 24,084, and make the same waiver therein contained.

The following are the docket entries offered in evidence in Equity cause No. 24084:

1903, July 18. Deposit of costs by Chas. H. Merillat \$20.
“ “ “ Bill—Exhibits (3)—appearance—order to file—Filed.
175
1903, July 18. Bill Spa. to ans. & copies (3) to Deft's all (3) issued.
“ “ 20. Inj'n—Affidavits in support of mo. for (7)—Filed.
“ “ “ Appearance of Def'ts all—by A. B. Duvall & E. H. Thomas by præcipe.
“ “ 21. Inj'n—Rule as to—Ret'ble Aug. 25, 1903, M. 68 p. 380.
“ “ 22. Copies—to Thos. G. Hensey.
“ “ 24. Certain Certificates of Interest—stipulation of parties as to.
“ “ 29. Spa. to ans.—Ret'd—Served Def'ts—all (3).
“ Aug. 20. Amendments to Bill filed.
“ “ “ “ “ Affidavits (4) in support of
“ “ 22. Rate if int.—paid by Mrs. Dean—aff't as to—Filed.
“ “ “ Costs of Building—S. S. McLaughlin—aff't as to—Filed.
“ “ 24. Amendments to Bill—Service of copy on Def't M. C. Hooker.

1903, Aug. 24. Amendments to Bill—Filed by C. H. Merillat.
 “ “ “ Amendments to Bill—Filed by C. H. Merillat.
 “ “ “ “ “ Affidavits (3) in support of.
 “ “ 31. Separate answer of M. C. Hooker & jurat filed.
 “ “ “ Amended Bill—separate ans. of M. C. Hooker—jurat
 filed.
 “ “ “ Affidavit of M. C. Hooker jurat filed.
 “ “ “ “ “ “ “ “ “ “ “
 “ “ “ “ “ “ “ “ “ “ “
 “ Sept. 1. Answer of Defendant No. 3 & Aff’t in support.
 “ “ “ “ “ “ “ “ 1—jurat filed.
 “ “ “ “ “ “ “ “ 1—Aff. in support—jurat.

176 (The following is paragraph 12½ of answer of Defendant
 Thomas G. Hensey filed in Equity cause 24,084, on September 1st, 1903.)

This defendant denies that he individually or in conjunction with the defendants, Hooker and Melville D. Hensey, or either of them, by means of fraud, or otherwise, illegally and wrongfully or otherwise obtained from the complainants and others similarly situated any sums of money, large or small, which are by him withheld, and he denies that any monies received from the complainants were by him used in whole or in part in the purchase of any real estate or interest in any real estate in the District of Columbia; and he says that no money received by him from the complainants or any of them was used in the purchase in whole or in part of any of the real estate mentioned in paragraph twelve and one-half of complainants’ bill; that, in point of fact, most of the real estate mentioned therein, in which he has any interest, was acquired long before the purchase of the Dean tract of land; and he says that the complainant Joseph W. Little had absolutely no information upon which he could make the affidavit amending the said bill; that the said allegation was wholly unfounded, to the knowledge of the said complainant, Joseph W. Little.

MASON N. RICHARDSON, produced as a witness on behalf of the complainants, and after being duly sworn according to law,
 177 testified as follows:

By Mr. MERILLAT:

Q. Mr. Richardson, please state your full name, age, occupation, or profession, and for how long you have been practicing the same and where? A. Mason N. Richardson is my name. I have been practicing law about twenty-four years, which, of course, necessarily makes me over twenty-one. I am under sixty-five. I am a lawyer.

Q. And whereabouts? A. A member of the bar of the Supreme Court of the District of Columbia, and also a member of the bar of the Supreme Court of the United States.

Q. Please state whether or not you are familiar with the examination of titles and the examination of the land records of the District of Columbia? A. I am and have had a special experience in connec-

tion with the examination of titles. I am a member of a title company and have access to their records to facilitate the examination of titles.

Q. Please state whether or not you have recently examined the title to what is known as Dry Meadows, being the property in litigation here? A. I have, from February 17th, 1891, to date.

Q. Please state what, if any, transfers or conveyances you found of the right, title and interest of Thomas G. Hensey in that property between 1891 and the present date. A. The only conveyance
178 in respect to the individual interest of Thomas G. Hensey in Dry Meadows is the conveyance heretofore offered in evidence in this case dated May 19th, 1906, and recorded in liber 3003, folio 347, on the 21st day of May, 1906, being a deed from Thomas G. Hensey and Melville D. Hensey, trustees, to Charles W. Stephens, Leonard H. Dyer, Helen M. Soule, Annie Holmes, Lyman D. Landon and Susan B. Kimberly in accordance with their interests as claimed and set forth in said deed.

Q. Please state whether or not you found prior to 1906 and conveyance of the individual interest of Thomas G. Hensey as a member of the Dry Meadows Syndicate? A. I did not.

Q. The record prior to or on the 24th day of August, 1903—I am now referring to the individual interests of Thomas G. Hensey in that syndicate. A. I understand the question. I did not find any such conveyance.

Mr. MERILLAT: Counsel for complainants desire to give notice that they will at the next session introduce in evidence a syndicate certificate showing that the individual title to this property on the part of the syndicate members was held under syndicate certificates and the title itself being held by trustees for the contributors in the syndicate.

Cross-examination.

By Mr. WHITE:

Q. Mr. Richardson, how far back did you examine the —
179 to what has been here termed the Dry Meadows Syndicate property? A. I began with the deed from Sophia Jones to Melville D. Hensey in liber 1558, folio 289, February 17th, 1891, that being the commencement of the acquisition of any interest of the Henseys in this property.

Q. That was a deed in fee? A. That was a deed in fee to Melville D. Hensey.

Q. What was the next conveyance? A. The next conveyance was a deed of trust by Melville D. Hensey to Henry L. Miller and Mahlon Ashford, trustees, recorded in liber 1558, folio 291, to secure a note to Horace S. Jones for \$6,000.00, this trust being dated February 17th, 1891.

Q. And the next one? A. The next one was a deed of trust from Melville D. Hensey to Hensey and Landon, trustees, to secure Thomas G. Hensey \$1500.00. That trust was recorded in liber 1568, folio 5, and that trust was dated February 27th, 1891.

Q. Give the next one? A. The next deed was a deed in trust

from Melville D. Hensey to Hensey and Soule, trustees, and that deed is recorded in liber 1568, folio 8. That deed conveyed Dry Meadows, the land in question, to Hensey and Soule as trustees.

Q. And the next one? A. The next deed was a release.

Q. Of which trust? A. Of the trust which I have heretofore——

Q. (Interrupting.) Mention it by dollars. Was it the six
180 thousand or fifteen hundred dollar trust? A. The next deed is a release dated April 19th, 1892, being a release of the trust to secure Thomas G. Hensey Fifteen hundred dollars.

Q. And the next one. A. The next deed was a deed from Hensey and Soule, trustees, to Walter R. Hensey, recorded in liber 1891, folio 182, February 28th, 1897. That is a deed in fee.

Q. And the next one. A. From Walter R. Hensey to Thomas G. Hensey and Melville D. Hensey, a deed in trust recorded in liber 1891, folio 184, and dated January 30th, 1894. That is a deed in trust conveying Dry Meadows, the tract in question.

Q. What is the next conveyance? A. The next conveyance is a deed from Henry L. Miller, surviving trustee, to Thomas G. Hensey and Melville D. Hensey, trustees, in trust, and is a deed of release of the deed of trust heretofore referred to to secure \$6,000.00 to Horace S. Jones. This deed of release is dated November 10th, 1903, and is recorded November 12th, 1903, in liber 2766, folio 260.

Q. And that, with the other deed which you have testified to on your examination in chief, brings it up to date from the place where you began? A. It does.

Q. It brings the record up? A. Yes, sir.

Redirect examination.

By Mr. MERILLAT:

Q. With the result that you find the property clear of in-
181 cumbrances? A. We find the property clear of incumbrances. Of course, speaking as of the date——

By Mr. WHITE:

Q. Since a certain date? A. To which I just referred, being February 17th, 1891.

MASON N. RICHARDSON.

Signed for the witness by me by consent and agreement of counsel,
this 27 day of October 1908.

EDWIN L. WILSON, *Examiner*.

It is hereby stipulated by and between the parties hereto that there shall be copied into the record the material parts of all deeds mentioned by the witness Richardson; the material parts being the dates, the parties, the consideration, a statement of the purpose of the deed and the title conveyed by it; each of the parties hereto, however, reserving the right to object on the ground of the competency, relevancy or materiality of any of said deeds to the issues in this cause, but each party waiving formal proof by certified copy or production

of the whole deed, and that such deeds as may be properly considered as evidence are offered as part of the complainants' case.

The material parts of said deeds are as follows:

Deed from Sophia Jones, Widow, Horace S. Jones and Fannie C. Jones, his wife, and Mary Virginia Jones, unmarried, to Melville D.

182 Hensey, dated February 12th, 1891, and recorded in liber 1558, folio 289. Consideration mentioned in said deed is \$10.00. Deed in fee simple conveying the property in question.

Deed of trust from Melville D. Hensey to William L. Miller and Mahlon Ashford, dated the 12th day of February, 1891, and recorded February 17th, 1891, in liber 1558, folio 291.

Deed of trust to secure the payment of \$6,000. to Horace S. Jones.

Melville D. Hensey to Alexander T. Hensey and Lyman D. Landon, dated February 12th, 1891, and recorded February 27th, 1891.

Deed of trust to secure the payment of \$3,000. to Thomas G. Hensey.

Melville D. Hensey to Thomas G. Hensey and John H. Soule, dated February 13, 1891, and recorded in liber 1568, folio 8 et seq.

Deed in trust containing the following trust and powers:

183 "In Trust nevertheless: First: To hold said real estate for the sole use and benefit of such persons as have contributed to its purchase their heirs and assigns as tenants in common according to their respective contributions until real estate shall be sold as hereinafter provided. Second: To do generally whatever they the said Trustees may deem necessary and proper to improve and develop the property and put into marketable condition: Third: To borrow such sum or sums of money for such time, on such terms, with such privileges of anticipation of payment and partial release and at such rate of interest, payable at such periods as said Trustees or the survivor of them shall deem most for the benefit of all concerned, with power and authority to execute such mortgage or mortgages deed or deeds of trust or other necessary instruments of writing, conveying and encumbering the whole or any part of said land, as they or the survivor of them may deem necessary for the purpose of securing the payment of such sum or sums and the interest thereon; and the note or notes representing borrowed money may if said Trustees prefer be signed by any other person and said Trustees and the survivor of them shall apply the sum borrowed for the best interest of all concerned, but no person lending money to said Trustees or the survivor of them shall be required to see to the due exercise of any discretion or of any money by said Trustees or the Survivor of them. Fourth: To lease or sell the said real estate or any part thereof at any time in their or his discretion, and to make sale, at such place and price, and upon such terms, and after such notice as the said Trustees or the survivor of them shall deem most for the interest of all concerned, and in case any such sale to convey the real estate sold in fee simple or for any less estate to the purchaser or purchasers thereof, his heir or their heirs and assigns upon compliance with the terms of the sale free and discharged from all liability for the due exercise of any discretion

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reposed in said Trustees and all liability on the part of said purchaser or purchasers his heir or their heirs and assigns to see or to account for the due application of the purchase money or any other money paid by said Trustees or the survivor of them, it being the intention of their deed to give said Trustees and the survivor of them and his heirs as broad and ample power and authority to improve, encumber, lease, sell and convey said real estate as if they or he owned the same in fee simple absolute. Fifth: To render due and prompt distribution among persons interested, their heirs and assigns, as tenants in common according to their respective interests, but no purchaser or other person dealing with said Trustees or the survivor of them with reference to said trust shall be under any obligations to see to such accounts or distribution."

Thomas G. Hensey and John H. Soule to Walter R. Hensey, recorded in liber 1891, folio 182. Consideration \$10.

Deed in fee from the grantors as trustees in trust.

Walter R. Hensey to Thomas G. Hensey and Melville D. Hensey, recorded in liber 1891, folio 184. Consideration \$10.

185 Deed in trust containing the same provisions as to the trust and powers thereunder as the deed above quoted.

WASHINGTON, D. C., *July 3, 1908*—2 o'clock p. m.

Met pursuant to adjournment at the law offices of Charles H. Merillat, Esquire, Bond Building, for the purpose of taking additional testimony on behalf of the complainants.

Present: Mr. Charles H. Merillat, on behalf of the complainants; Mr. William Henry White on behalf of certain defendants; Examiner and witness.

Whereupon MARY B. DODGE, produced as a witness on behalf of the complainants, and after being duly sworn, testified as follows:

By Mr. MERILLAT:

Q. Mrs. Dodge, please state what relationship, if any, you were to the late Thomas G. Hensey? A. Mr. Hensey married my mother.

Q. Did you on or about October 17th, 1903, make a transfer to Lyman D. Landon of three houses on Westminster street? A. Yes, sir.

186 Q. State what was the consideration for that transfer?

Mr. WHITE: I object to it as immaterial, of course.

A. Ask me some simpler question.

Q. Why did you make that transfer? A. I will have to go back.

Q. Why at that time did you make that transfer? A. Because I was not entitled to hold the seven houses that the deed called for. Mr. Hensey had told me that he owed Mr. Landon all this money and in case of my recording the deed the three houses were to go to Mr. Landon to satisfy a debt which he said he owed to Mr. Landon.

Q. Do I understand, then, that you had been deeded by Mr. Hensey the seven houses in fee? A. Yes, sir.

Q. And that you in consideration of a debt, or in satisfaction and

settlement of a debt that Mr. Hensey owed to Mr. Lyman D. Landon you deeded to Mr. Lyman D. Landon three houses on Westminster street? A. Yes, sir, at his request I did that.

Q. At whose request? A. Mr. Hensey told me that he owed this money to Mr. Landon and I know of it before that.

Q. To whom did you deliver the deed? A. To Mr. Hensey.

Q. You did not deliver it to Mr. Landon? A. No, sir.

Q. You stated in your examination in what is known as
187 the Westminster Street case that at the time the seven houses were deeded to you nothing was said to you regarding the Landon matter, but that at a later time Mr. Hensey told you what you should do? Is that correct? A. Yes, sir.

Q. How near was it to the time that you made this transfer of the three houses to Mr. Landon that Mr. Hensey spoke to you regarding the Landon debt? A. It was around May or the early part of June 1902, we had that conversation. Perhaps in May.

Q. Mr. Hensey told you that he wanted you to deed three houses to Mr. Landon? A. Yes, sir.

Q. In settlement of a debt that he owed to Mr. Landon? Is that correct? A. He told me he had some such arrangement with Mr. Landon that that was to be done. He was going away for the summer—the summer of 1902 and I was always anxious about this deed to know exactly what to do in case of his death. I knew that only \$3700.00 and interest was due me and in conversation he told me that he owed Mr. Landon \$5250.00 and that I was to deed three houses to Mr. Landon, keeping four for myself. We computed the value of mine—the ordinary market value, taking into account depressions perhaps and the first trust that was due on them and any outstanding liabilities, which were very apt, and he must have known that—I did not suspect it, but there were always things that would be due on these houses and in order to thoroughly protect me he put four houses for my portion and if there were any debts I could sell
188 one of them to pay them. The difference between the first trust and \$5500.00, which amount we were not sure of, but which we thought would be the most we could get for them, and the three houses at that figure would barely cover my trust. The fourth house was held to satisfy any difference.

Mr. WHITE: I move to strike out the testimony as immaterial and irrelevant.

MARY B. DODGE.

Signed for the witness by me by consent and agreement of counsel, this 27 day of October 1908.

EDWIN L. WILSON, *Examiner*.

Hereupon the further taking of testimony in this cause and on this behalf was adjourned until Wednesday July 8th, 1908, to meet at the same place at 2.30 p. m.

EDWIN L. WILSON, *Examiner*.

Mr. MERILLAT: I call upon counsel, as I have called on counsel heretofore, to produce the checks and check stub books covering the

period in question. As to the vouchers they can do as they think best as to the method of proving them.

WASHINGTON, D. C., *July 8th*, 1908.

Met pursuant to adjournment at the law offices of Charles H. Merillat, Esq., Bond Building, for the purpose of taking additional testimony on behalf of the complainants.

189 Present: Mr. Charles H. Merillat on behalf of the complainants; Mr. William Henry White on behalf of certain defendants; Examiner and witnesses.

Whereupon ALBERT B. RUFF, produced as a witness on behalf of the complainants, and after being duly sworn, testified as follows:

By Mr. MERILLAT:

Q. State your full name. A. Albert B. Ruff.

Q. And occupation. A. Cashier of the National Bank of Washington. I was formerly cashier of the Central National Bank before it consolidated with the Bank of Washington.

Q. Please state whether or not Lyman D. Landon had an account with the Central National Bank in the year 1901 and in subsequent years? A. Yes, sir, he did.

Q. Will you please produce the same?

(Hereupon the witness produced a sheet showing the account of Lyman D. Landon.)

Mr. MERILLAT: We desire to offer in evidence the account of Mr. Landon for the years 1901 and 1902 and ask that the same be copied into the record by the Examiner, the original to be returned to the bank as part of its files.

Mr. WHITE: I object to the introduction of this on the ground that it is incompetent, irrelevant and immaterial, and for
190 the further reason that these are not the original entries.

Said account is in words and figures, following to wit:

The Central National Bank of Washington.

	L. D. Landon.	Cr.	Dr.	Balance.
1901.				
Jan'y	14.	557.75	.....	1145.55
	15. Stewart.....	.....	125.	1020.53
	" "	27.13	.....	1047.60
	17. Willey.....	53.73	.....	1101.39
Feb.	4. ....	.....	32.35	1069.04
	18.	80.		
	" Kearnor.....	25.75		
	19. Stewart.....	25.		
M'ch	6. ....	.....	100.	
	15. Stewart.....	25.		
	" Kearon.....	25.13		
	25. ..	.....	150.	
	29. ....	.....	100.	
Ap'l	8.	100.		
	13—2046A			

		Cr.	Dr.	Balance.
	10. Graham	55.		
	Stewart	25.		
	16.		100.	
	25.		30.	
May	6.		200.	
	15. ....do.....	25.		
191				
May	16. Carr	15.65		
June	12.	104.50		
	15. Carr	15.73		
	19. Stewart	25.		
	24.		200.	
July	5.		15.	
	15. Stewart	25.		
	" Carr	15.80		
	" Graham	110.		
Aug.	5.		100.	
	Bal		771.60	
		<u>3166.35</u>	<u>3166.35</u>	
1901.				
Aug.	16. Balance	771.60		
	21. Stewart	25.		
	27.	50.		
	"		50.	
Sept.	16. ....do.....	25.		
Oct.	11. ....do.....	25.		
"	24.		64.50	
	30.		1.25	
Nov.	22. Stewart	25.		
Dec.	13.		25.00	
	"		240.00	
	23. ....do.....	25.		
	27.	60		
1902.				
Jan.	15. ....do.....	25		
	Carr	15.48		
192				
Jan.	15. Graham	30.		
	20. Livingston	55.83		
	24.		369.50	
Feb.	5. Graham	22.		
	"do.....	35.		
	7.	209.70		
	15. Carr	15.56		
	21. Stewart	25.		
	28. Graham	40.		
	" Kearon	30.57		
M'ch	10.	150.		
	15.		100.	
	" Graham	25.		

The Central National Bank of Washington.

	L. D. Landon.	Cr.	Dr.
1902.			
M'ch	15. Carr.....	15.64	
	" Stewart.....	25.	
	31. Graham.....	40.	
Ap'l	15. Carr.....	15.57	
	" Stewart.....	25.	
	" Graham.....	25.	
	20. ....do.....	40.	
May	6.	67.25	
193			
May	15. Stewart.....	25.	
	" Carr.....	15.60	
	29. Graham.....	30.	
	" Carr.....	10.22	
June	14. Stewart.....	25.	
	" Graham... ..	30.	
	" Carr.....	15.60	
	30. Carr.....	10.10	
July	3.		150.
	15. Stewart.....	25.	
	"do.....	10.	
	" Carr.....	15.60	
Aug.	1. Graham.....	25.	
	6.	87.03	
	15. Stewart.....	25.	
	"do.....	10.	
	28.		80.
Sept.	5.	202.34	
	" Graham.....	25.	
	" Carr.....	10.20	
	"do.....	10.65	
	Balance.....		1466.29
		<u>2546.54</u>	<u>2546.54</u>
1902.			
Sept.	9. Balance.....	1466.29	
	11.		150.
	" Dawson.....	40.60	
	15. Stewart.....	25.	
194			
Sept.	15. Stewart.....	10.	
	" Lee.....	5.	
	29.		100.
Oct.	2. Graham.....	25.	
	15. Stewart.....	10.	
	"do.....	25.	
	" Carr.....	10.34	
	" Lee.....	5.	

		Cr.	Dr.
	30. ....	.....	300.00
Nov.	5.	111.65	
	11. Kamon.....	76.13	
	14. ....	.....	175.
	15. Stewart....	10.	
	17. Lee.....	5.	
	18. ....	.....	100.
Dec.	1. Graham..	50.25	
	15. Stewart.....	10.	
	" Lee.....	5.	
	Bal.....	.....	1065.26
		<u>1890.26</u>	<u>1890.26</u>
1902.			
Dec.	31. Balance.....	1065.26	

By Mr. MERILLAT:

Q. Please state what these sheets are. A. The original entries.

195 Q. Made contemporaneously with either the deposit or the checking out of the money? A. Yes, sir, with either the deposit or the check. For instance, a man would come in and make a deposit and the slip would be handed to the bookkeeper and that would be the original entry.

Q. I find, Mr. Ruff, a number of places where various names are entered in a column between the debit and credit. Please explain what those names signify. A. Notes left with us for collection.

Q. The lead pencil memorandum constitutes the daily balance of Mr. Landon? A. Yes, sir.

ALBERT B. RUFF.

Signed for the witness by me by consent and agreement of counsel, this 27 day of October 1908.

EDWIN L. WILSON, *Examiner*.

JOHN C. ATHEY, produced as a witness on behalf of the complainants, and after being duly sworn, testified as follows:

By Mr. MERILLAT:

Q. Please state your full name? A. John C. Athey.

Q. And occupation? A. Cashier of the United States Savings Bank.

196 Q. Please state what, if any, knowledge you have as to when Mr. Lyman D. Landon signed and acknowledged the transfer of the certificate I hand you in the Norwood Real Estate Company? A. It was on or about the 20th of March, 1908.

Q. For how long a time have you known Mr. Landon? A. I should say about a year and a half or two years.

Q. What has been his mental condition in that time? A. Well,

I do not know anything against his mental condition. I know his physical condition has not been very good.

Q. Please state whether or not in March, 1908, his mental condition was good? A. It was good to the best of my knowledge and belief.

Q. How much conversation have you had with him in the last year or so? A. Very little conversation.

Q. Did he seem in March, 1908, to remember what was going on and to know what he was doing? A. Yes, sir.

Q. So that in your opinion he would be able to testify in matters that concerned him and to know what he was doing?

A. Mr. WHITE: Objected to as leading. He has not said anything about testifying.

Q. Please state whether or not in your opinion his mental condition was such as to be competent to attend to the affairs and
197 transactions of life from what you saw of him?

Mr. WHITE: I object to that. The witness has not qualified as an expert and has not shown sufficient acquaintance with him or had conversations sufficiently with him upon which to base an estimate as a non-expert.

A. I believe that he was.

Q. How much of a conversation did you have with him in reference to these matters? A. Very few minutes' conversation because I went there for a specific purpose and that was to take his acknowledgment and to witness certain assignments. He had been sick, but he got out of bed and fixed up these matters. I went there at the request of Mr. James L. Karrick.

Q. Did he himself prepare the transfers? A. He signed them.

Q. Who had them when you went there? Did you take them to him or did he have them? A. No, sir, they were there in Mr. Landon's house when I went there.

Q. Did he have them or did you get them from some one else? A. He and Mr. Karrick were handling them. I do not know just where they got them.

Mr. WHITE: I object to all this testimony as incompetent, irrelevant and immaterial in relation to these certificates.

Mr. MERILLAT: The examination is conducted especially in view of the repeated attempts to get Mr. Landon's testimony and
198 the failure on his part to respond to subpoenas or for counsel to secure his testimony at all.

By Mr. MERILLAT:

Q. Did he likewise at the same time sign his name on the District Investment Company's certificates, the 11th and E street syndicate certificate—the two District Investment Company's syndicate certificates and the 11th and E street syndicate certificate and the other two Norwood Real Estate Company's certificates? A. Yes, sir; my signatures appear as a witness on all of these papers.

Cross-examination.

By Mr. WHITE:

Q. I understand you to say that when you went there Mr. Landon was sick? A. Yes, sir.

Q. That was the occasion for your going there? A. Yes, sir, he was sick. He was sick in bed, but he got up out of bed and signed these papers and acknowledged them.

Q. Have you seen him within six months? A. Yes, sir, I saw him today. He was in the bank today. He came in inquiring for Mr. Karrick.

Mr. MERILLAT: In view of the statement that Mr. Landon is out and the statement of the preceding witness, Mr. Ruff, cashier of the National Bank of Washington, after he had left the stand, that Mr.

Landon has been in his bank personally within the past two
199 or three weeks, counsel for the complainants respectfully request that a time and place be named at which they may examine Mr. Landon in person.

By Mr. MERILLAT:

Q. Mr. Athey, will you please state whether or not in addition to these various assignments you have taken any other acknowledgments within the past three years for Mr. Landon? A. There were some deeds, I think.

Q. How many, do you remember? A. I have got in my book "three deeds"—"three deeds, etc." I suppose "etc." refers to these other papers.

Q. And these were taken in March last? A. Yes, sir.

By Mr. WHITE:

Q. Who was present, Mr. Athey? A. Mr. James L. Karrick.

Q. No one else? A. There was a lady in the room. I think she was his nurse. I am not certain whether she stayed in the room or not, but she was there when I went. She was there when I went in, but whether she continued in the room while I was there I am a little uncertain about that.

Q. I will ask you whether or not you had any conversation with him at that time? A. Only in passing the compliments of the day and stating something about his condition. I may have said I was glad to see he was getting better, or words to that effect.

200 Q. Did he go back to bed before you left? A. No, sir, I think not.

Q. Have you seen him from that time until today? A. I saw him on one other occasion afterwards. I took his acknowledgment to a paper. That was, I think, within a week.

Q. Within a week after your former visit? A. After this former visit.

By Mr. MERILLAT:

Q. What sort of a paper was it you took his acknowledgment to afterwards? A. I think it was a deed. That is my recollection.

(Witness hereupon looked at some papers.) Yes, sir, my recollection is it was a deed.

Q. Where was he then? A. At his house.

Q. In bed? A. Yes, sir, he was in bed and got up just as he did before.

Q. How long a time were you there on the first occasion? A. On the first occasion?

Q. Yes, sir. A. I should think twenty or thirty minutes.

Q. Now, between these two dates of taking the acknowledgments and today have you seen Mr. Landon at any time? A. I have an indistinct recollection that he was at the bank since that time, 201 but I cannot just recall the days. I think he came up about a month or so ago and was inquiring for Mr. Karrick.

Q. Mr. Karrick is connected with the bank? A. Mr. Karrick is now the president of the bank. He is transacting business for Mr. Landon.

Q. Have you attended to any of the papers, or had any of the papers of Mr. Landon personally? A. No, sir; only as I have stated about these acknowledgments and as a witness.

By Mr. WHITE:

Q. In the execution of the certificates which you spoke of as acknowledgments you were merely witnessing Mr. Landon's signature? A. Yes, sir.

Q. And these are all in blank? A. Yes, sir.

Q. Did you know anything about the purpose of such execution by him? A. I only surmised. I did not know. I just surmised.

Q. You went there at the request of Mr. Karrick I believe you said? A. Yes, sir.

Q. And Mr. Karrick is the president of the bank of which you are cashier? A. He was not at that time. He is now.

Q. Did you know Mr. Karrick's relationship to Mr. Landon? A. I knew they were very close friends, but I don't think there is any blood relationship between them. 202

Q. How long have you known Mr. Karrick? A. About little over two years. A little over two years.

Q. Did you make any examination by questions, or otherwise, of Mr. Landon to ascertain whether or not he was in a feeble condition to execute papers? A. I did not, sir.

Q. Since that time you have not had sufficient conversation with him to be a judge as to whether he was in a fit condition to execute papers or to testify now? A. No, sir, I have not had any such conversation.

By Mr. MERILLAT:

Q. The deeds to which you took his acknowledgment you took his formal acknowledgment as notary public? A. Yes, sir.

Q. Did you have any hesitation in taking his acknowledgment to those deeds? A. I did not, sir.

Mr. WHITE: I formally move to strike out all the testimony ex-

cept that relating to the mental condition of Mr. Landon as being incompetent, irrelevant and immaterial.

JOHN C. ATHEY.

Signed for the witness by me by consent and agreement of counsel, this 27 day of October, 1908.

EDWIN L. WILSON, *Examiner*.

203 Hereupon CARL H. OCKERHAUSEN, produced as a witness on behalf of the complainants, and being duly sworn, but on account of the deafness of the witness his examination was dispensed with and a statement of the witness was taken and agreed upon by counsel, which is as follows:

The witness being very deaf it is agreed between counsel that he would testify, if questioned, that he bought the house number 513 Florida Avenue, Northwest, in April a year ago at auction for \$4020.00 and that Mr. Coughlin, of the Columbia Title Insurance Company, attended to the whole matter for him and he has no further knowledge of the details of the transaction.

Counsel for the defendants objects to all of the above on the ground that it is incompetent, irrelevant and immaterial.

EDWIN L. WILSON, *Examiner*.

JAMES L. KARRICK, heretofore produced as a witness in this cause and duly sworn, was recalled for further examination on behalf of the complainants, and testified as follows:

By Mr. MERILLAT:

Q. Mr. Karrick, are certificates numbers one, two and twenty-nine in the Norwood Real Estate; certificate number thirty-seven in the 11th and E streets syndicate; certificates numbers twenty-seven and forty-one in the District Investment Company and certificates
204 cates numbers one and six in the Broad Branch, otherwise known as the Dry Meadows, syndicate, the syndicate certificates and papers to which you referred in your former examination as having been found by you in Mr. Landon's possession? A. Yes, sir.

Q. Have you been able as yet to find the bank books of Mr. Landon for this intervening period subsequent to 1899? A. No, sir.

Q. How frequently, if you know, has Mr. Landon been out in the last few months? A. I do not know.

Cross-examination.

By Mr. WHITE:

Q. I hand you a paper headed "T. G. Hensey, Dr., to L. D. Landon, C'r," said paper ending with the words "Acc't settled October 1st," and ask you also if that is one of the papers which you found in Mr. Landon's papers? A. Yes, sir.

Mr. WHITE: I ask the Examiner to mark the paper for the purposes of identification.

Said paper referred to is marked for identification as "Defendants' Exhibit J. L. K. number 1, Edwin L. Wilson, Examiner."

By Mr. WHITE:

Q. Make any explanation, Mr. Karrick, which you may be able to in regard to this paper. A. It was about a few months
205 before Mr. Hensey died and that was the first I ever knew of it or ever heard of this paper. Mr. Landon came to me and told me the trouble he was in about this suit—that his property was tied up and I asked him if he had any—he told me he had a settlement with Mr. Hensey and I asked him if he did not have some papers to show for it and he said he could not find them and he had looked for them. I said, "Mr. Hensey must have his books. I will go to see him." I went to see Mr. Hensey and he told me that his books had been destroyed by somebody, but said that Landon has got a copy of his books. He said, "I gave him a copy." I said, "he says he hasn't got it." He said, "look through his papers again. I know he has got it. I know he has got a copy." I said, "I believe he has got one if he looks diligently for it." I went back to Mr. Landon and told him that Hensey said he had a copy and he said he could not find it. He said he would look some more, and I heard nothing more about this paper until the papers came in my possession and I opened them. They were old papers and in going over them I found this mixed in with some very old papers and evidently that is the reason why Landon did not find them. It was all mixed up and put away with some old documents and not with the Hensey papers and evidently that is the reason he could not find it. I asked Hensey at the time if he could not give me a verbal description of the account on his books, if his books were gone, and he said he could not give the exact figures, but he told me in substance about what this paper shows. When I found this paper I recognized it as the one he referred to.

Mr. MERILLAT: I move to strike out the entire answer of
206 the witness as incompetent, irrelevant and immaterial; as simply hearsay and as not the best evidence and as not responsive to any matter, but am perfectly ready and willing that it shall be considered as having been given by the witness in the defendant's own time in order to prevent the necessity of recalling Mr. Karrick and preserving to the defendants the same rights they would have if they had recalled him and he so testified as part of their case.

Mr. WHITE: I will now ask another question subject to the same objection.

By Mr. WHITE:

Q. Do you know the handwriting on that paper? A. I do not know.

Q. It has been testified here today by Mr. Athey that he saw Mr. Landon at his bank today. Do you know anything about the present physical condition of Mr. Landon? A. I heard he came out to the bank to see me, but I did not see him. I was in the building across the street for about five minutes—away from my office—during the

five minutes I was away he came and he did not wait to see me. I did not see him.

Q. Do you see him frequently or otherwise? A. I see him about once in ten days or sometimes two weeks.

Q. Are you still of the opinion that he is not capable of testifying as to any transactions that occurred several years ago? A. I don't think he is. I think his doctor would be better able to judge
207 than I would be.

Q. Have you, say within three weeks, tried to get Mr. Landon to recall any transactions of the past years, and, if so, with what result? A. Well, I have tried to and with practically no result except in that Shipman matter, he seemed to be clear on that. Whether he is correct or not I do not know.

Q. I understand that the Shipman matter was one transaction which he seemed to remember distinctly and which occurred sometime ago. A. Yes, sir.

Q. And you took advantage of that fact and tried to ascertain from him other things without success? A. Yes, sir.

Mr. MERILLAT: We desire to offer in evidence certificates numbered one, two and twenty-nine, for five hundred dollars each, in the Norwood Real Estate Company with the endorsement on the first two of Lyman D. Landon and with Mr. Athey as witness—no date, and with the endorsement on number 29 from Augustus Burgdorf to Thomas G. Hensey; date, June 9th, 1899, apparently, and from Thomas G. Hensey to Lyman D. Landon, of date October 10, 1900, apparently, and the endorsement of no date of Mr. Landon with Mr. Athey as witness. This last certificate we would like the Examiner to hold for the present.

We also offer in evidence certificate number thirty-seven of the 11th and E Streets Syndicate, stated to be issued in lieu of certificate number thirty-three, the date of the 11th and E street Syndi-
208 cate certificate being November 13th, 1903, and endorsed without date by Mr. Landon with Mr. Athey as a witness.

We also offer in evidence certificates numbers twenty-seven and forty-one in the District Investment Company, said certificates being endorsed by Thomas G. Hensey, number twenty-seven for A. N. Hensey, deceased, and number forty-one by Thomas G. Hensey to Lyman D. Landon, under date of October, 1903, each certificate being endorsed without date by Mr. Landon with Mr. Athey as a witness.

Mr. WHITE: I object to these as immaterial, irrelevant and incompetent.

Mr. MERILLAT: It should have been stated that the 11th and E streets Syndicate certificate was for one-half of a one-twenty-eighth undivided interest in parts of original lots one and two, in square 321, situated at the northwest corner of 11th and E streets, Northwest, and fronting 55 feet on 11th street and 70 feet on E street, the syndicate certificate stating that they are subject to deeds of trust for \$37,000.00; and the District Investment Company certificates, as stated to be in the certificates, of the value of \$250.00 in capital stock in the District Investment Company in each case.

By Mr. WHITE:

Q. Mr. Athey has testified about the endorsements on these certificates of Mr. Landon and has fixed the date as March, 1908, and has said that they were present. Was this a part of the assignment or conveyance of property made by him to your wife and his
209 brother on which they paid the annuity described by you? A. Yes, sir.

Q. That was the whole purpose of the execution of those papers and the execution of the certain deeds at that time at his house? A. It was. We tried to get an insurance company to give an annuity and turn over his property, but they would not take it. They would not pay. We tried to get them to pay \$50.00 and take a transfer of his property. In the first place, it was to be all in cash and they would not give the property a return of \$50.00 a month—the property would not warrant a fifty dollar a month payment. So my wife and his brother said they would do it.

JAMES L. KARRICK.

Signed for the witness by me by consent and agreement of counsel, this 27th day of October 1908.

EDWIN L. WILSON, *Examiner*.

Hereupon the further taking of testimony in this cause and on this behalf was adjourned subject to agreement of counsel.

EDWIN L. WILSON, *Examiner*.

210 Recorded Feb'y 28, 1894, in Liber 1891, Folio 184 et seq.

This indenture made this thirtieth day of January, A. D. one thousand eight hundred and ninety four, by and between Walter R. Hensey, unmarried, of the District of Columbia of the first part and Thomas G. Hensey and Melville D. Hensey of the same place, joint tenants of the second part Witnesseth, that the said party of the first part for and in consideration of the sum of ten dollars in lawful money of the United States to him in hand paid by the said parties of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey unto the said parties of the second part, their heirs or assigns, or the survivor of them, forever, the following described real estate, situate in the county of Washington, District of Columbia, to wit: all that certain piece or parcel of land and premises, known and distinguished as and being part of the tract of land in the county of Washington, District of Columbia, known as "Dry Meadows" beginning for the same at a stone a corner of the late Charles R. Belts' land, and running thence south $41\frac{3}{4}$ degrees east 57.84 perches to a stone; thence north 44 degrees, east 13.68 perches to a stone on Broad Branch Road, thence north $15\frac{1}{2}$ degrees west 58.12 perches to Jones' line; thence north 60 degrees, west 2.32 perches to a stone and
211 thence south $50\frac{3}{4}$ degrees west 35 perches to the place of begin-

ning, containing 9.40 acres of land more or less together with all the improvements, ways, easements, rights privileges, appurtenances and hereditaments to the same belonging or in any wise appertaining, and all the remainders, reversions, rents, issues and profits thereof, and all the estate, right, title interest claim and demand whatsoever either at law or in equity of the said party of the first part of, in, to or out of the said piece or parcel of land and premises, to have and to hold the said piece or parcel of land and premises with the appurtenances unto the only use of the said parties of the second part their heirs and assigns forever as joint tenants, in trust, nevertheless First to hold said real estate for the sole use and benefit of such persons as have contributed to its purchase, their heirs and assigns, as tenants in common, according to their respective contributions, until real estate shall be sold as hereinafter provided; second, to do generally whatever they the said trustees may deem necessary and proper to improve and develop the property and put into marketable condition; third, to borrow such sum or sums of money for such time on such terms with such privileges of anticipation of payment and partial release, and at such rate of interest payable at such periods as said trustees or the survivor of them shall deem most for the benefit of all concerned, with power and authority to execute such mortgage or mortgages, deed or deeds of trust or other necessary instruments of writing, conveying and encumbering the whole or any part

of said land as they or the survivor of them may deem necessary for the purpose of receiving the payment of such sum or sums and the interest thereon, and the note or notes represent-

ing borrowed money may if said trustees prefer be signed by any other person and said trustees and the survivor of them shall apply the sum borrowed for the best interest of all concerned, but no person lending money to said trustees or the survivor of them shall be required to see to the due exercise of any discretion or of any money by said trustees or the survivor of them. Fourth. To lease or sell the said real estate or any part thereof at any time in their or his discretion and to make sale at such place and price and upon such terms and after such notice as the said trustees or the survivor of them shall deem most for the interest of all concerned, and in case any such sale to convey the real estate sold in fee simple or for any less estate, to the purchaser or purchasers thereof, his, her or their heirs and assigns upon compliance with the terms of the sale, free and discharged from all liability for the due exercise of any discretion reposed in said trustees, and all liability on the part of said purchaser or purchasers, his her or their heirs and assigns to see or to account for the due application of the purchase money or any other money paid by said trustees or the survivor of them, it being the intention of their deed to give said trustees and the survivor of them, and his heirs as broad and ample power and authority to improve, encumber, lease, sell and convey said real estate as if they or he owned the same in fee simple absolute. Fifth. To render due account of their management of the trust and to make due and

prompt distribution among persons interested, their heirs and assigns as tenants in common according to their respective interests but no purchaser or other person dealing with said

trustees or the survivor of them with reference to said trust shall be under any obligations to see such accounts or distribution, and further that he the said party of the first part and his heirs shall and will at any and at all times hereafter, upon the request and at the cost of said parties of the second part their heirs or assigns, make, execute, deliver and acknowledge all such other deed or deeds, or other assurance in law for the more certain and effectual conveyance of said piece or parcel of land and premises and appurtenances unto the said parties of the second part, their heirs or assigns as the said parties of the second part their heirs or assigns, or their counsel learned in the law shall advise devise or require.

In testimony whereof the party of the first part has hereunto set his hand and seal on the day and year hereinbefore written.

WALTER R. HENSEY. [SEAL.]

Signed, sealed, and delivered in the presence of
ANSON S. TAYLOR.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Anson S. Taylor, a Notary Public, in and for the aforesaid District, do hereby certify that Walter R. Hensey, unmarried
214 party to a certain deed bearing date on the thirtieth day of January 1894, and hereunto annexed personally appeared before me, in the District aforesaid, the said Walter R. Hensey being personally well known to me to be the person who executed the said deed and acknowledged the same to be his act and deed.

Given under my hand and Notarial seal this 14th day of February 1894.

[NOTARIAL SEAL.]

A. S. TAYLOR,
Notary Public.

215 In the Supreme Court of the District of Columbia, Holding
an Equity Court.

Equity. No. 26396.

CHARLES H. MERILLAT et al.

vs.

THOMAS G. HENSEY et al.

Pursuant to request of counsel for the complainants I hereby set Friday, October 9th, 1908, at two (2) o'clock P. M., as the time and the law offices of Mason N. Richardson, Fendall Building, as the place, when and where the complainants will continue the taking of testimony on their behalf.

You are invited to be present and take such action as you may be advised.

EDWIN L. WILSON, *Examiner.*

To Charles H. Stevens, Nashua, New Hampshire; John H. Soule, Washington, D. C.

Copy of above notice served on said defendants.

EDWIN L. WILSON, *Examiner*.

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WASHINGTON, D. C., *October 9th*, 1908.

Met pursuant to agreement of counsel and notice at the law offices of Mason N. Richardson, Esquire, Fendall Building, for the purpose of taking additional testimony for and on behalf of the complainants.

Present: Messrs. Charles H. Merillat and Mason N. Richardson on behalf of the complainants; Mr. William Henry White on behalf of the defendants, except the defendant Soule. Examiner and witnesses.

CLAYTON M. NASH, produced as a witness on behalf of the complainants, and being duly sworn according to law, testified as follows:

By Mr. MERILLAT:

Q. Mr. Nash, please state your occupation? A. Deputy Marshal.

Q. Of what? A. Supreme Court of the District of Columbia.

Q. Mr. Nash, please state whether or not you served a subpoena duces tecum in what is known as the Dry Meadows case upon Lyman D. Landon, calling upon Mr. Landon to produce certain papers and records? A. Yes, sir, I served one on him.

Q. Where did you find him? A. I think at the corner of Tenth and K. I could not swear whether it was Tenth and K or
217 Eleventh and K. I could go to the house where he was.

Q. Did you have any conversation with him? A. Yes, sir. He came down stairs. He was upstairs and he came downstairs and he talked a few minutes and he said to me, he said, "What is the use of them bothering me with these papers. I haven't nothing more to do with it. I have turned all the books and papers over to Mr. Karriek and Mrs. Hensey." He says, "You better take these papers and take them down and serve them on Mr. Karriek." I said "No, sir." I said, "I couldn't do that."

Mr. WHITE: I object to the conversation with the Marshal especially and all of the testimony for the reason that no time is named and no subpoena specified.

By Mr. MERILLAT:

Q. Have you the subpoena duces tecum in question? A. No, sir, I have not.

Q. Please state if you can remember the date. A. I could not. I have not looked it up. This is the first time I have thought anything about it at all.

Q. Please state whether or not you made a return on the subpoena in question. A. Yes, sir, I made a return and also put down the number of the house and where it was located on the subpoena. Mr. Beale requested me to put it down particularly. I have not seen the dates from that day to this.

Q. Is the date of this call the date given in your return on the subpoena? A. Yes, sir.

218 Mr. MERILLAT: We will offer the subpoena in evidence, the Examiner not having it among the papers. In fact it is already in evidence, but we will especially offer it at this time.

Mr. WHITE: It is objected to as immaterial and irrelevant.

By Mr. MERILLAT:

Q. I wish you would please finish up the sentence about the house when you were interrupted by counsel.

(Hereupon the former answer of the witness was read.)

Mr. WHITE: I renew the objection.

A. (Continuing:) I could not do that—I told him I could not do that, stating that they were made out to him and then he spoke up again and said, “I have nothing to do with it. They are worrying the life out of me. You can see how I am now. I haven’t got anything and everything has been turned over to those people.”

By Mr. MERILLAT:

Q. What was his condition of health, both as to body and mind?

A. Of course, he had been sick. He was upstairs and he came down and met me in the parlor. You could see the old gentleman had been sick.

Q. What as to his ability to understand what was in the papers or what you said?

Mr. WHITE: I object.

Q. State his mental condition as you saw it? A. He seemed to understand all about it.

219 Mr. WHITE: I object to that question as being utterly impossible of answer. He cannot very well see a man’s condition.

By Mr. MERILLAT:

Q. Please state what, if anything, was said or done as to the contents of the papers? A. What I did?

Q. Yes, sir, as to what was on the subpoena duces tecum. Did he read it or did you read it to him? A. I think I read it to him. I read part of it and he said: “no; never mind about it.” I talked a minute and then thanked him and went out.

Q. Please state whether or not he was able to understand what was intended and the purpose of your visit. A. It was not, of course—I should judge he did the way he spoke, because he told me—he started in and told me all about the business and about turning all the papers over to these other people and why I did not serve it on the other people. I should think he understood it. Of course, I could not swear any further than that.

Cross-examination.

By Mr. WHITE:

Q. Is it your practice to read subpoenas in serving them? A. Yes, sir, if they ask me to I do—generally do.

Q. You did not say that this man asked you. A. Yes, sir. He said, first; "What have you got there? Read it?" I started
220 in to read it and he told me not to." A good many times I just tell them what it is in regard to.

Q. Did you leave a copy with him? A. Yes, sir.

Q. Is not that your practice in serving subpoenas, merely to leave a copy? A. Generally—not unless they ask me. A good many times they will ask me, "What have you got there"? You will read it to them.

Q. I want to know what your practice is in serving subpoenas? The only question is, is it your practice to read subpoenas or to merely deliver the subpoenas to them? A. If they ask you it is your business to read them to them.

Q. I am not asking you about my business. A. I said if they asked me it is my business.

Q. Wait until the question is put. Is it or is it not your practice to read subpoenas issued in equity causes and served by you? A. Well, it is just as I said before, if I should serve one on you and you should say, "What is it? read it." Of course, I would read it. If I handed it to you and you said nothing, I would not stop to read it. If a person—you have lots of colored people and they don't understand them and they will ask you and you will read it.

Q. Was Mr. Landon a colored person? A. No, sir. If anybody asked you, of course, you did it. He says: "What is it?
221 Read it." I started reading it and he said, "That is all." Then he went on telling further——

Q. Then, all the conversation that you had with him was that he said, "What have you got there? Read it."? A. Yes, sir.

Q. And you started to read it and he said, "that is all"? A. Yes, sir.

Q. Then he went on and told you this long story? A. He told me about the books and everything and why in the world they bothered him about it and why they didn't serve it on them and I told him I could not do it, it was made out to him.

Q. What was there in Mr. Landon's appearance that made you think he had been sick? A. Because the nurse came down and told me he was sick. First she said, "you cannot see him"—at least, to that effect and I said what I wanted to see him about and she said, "I will go up and see if he will see you," and she went up and said, "yes." I said, "he need not come down, if he doesn't want to. I will come up there. She said, "no, he will come down." I stayed down and he came down.

Q. Man or woman nurse? A. A woman.

Q. What time of the day was it? A. It was in the afternoon, I should think—well, it was after one o'clock. I think it was between one and two.

222 Q. What month? A. I could not say, sir.

Q. What year? A. Last year or this year.

Q. Do you know whether it was this year or last year? A. This spring—last spring. I have give- the case as I remember.

Q. Do you know whether it was in 1907 or 1908? Do you know? Answer yes or not. A. I should say, yes.

Q. Which was it then? A. It was last spring. I should say it was March or April.

Q. Of what year? A. 1908.

Q. Did you ever see Mr. Landon before? A. No, sir.

Q. Have you seen him since? A. No, sir, I don't think so. Not to know him. I don't know that I ever saw him before that to know him. I might have met him.

Redirect examination.

By Mr. MERILLAT:

Q. Mr. Nash, did you get any special instructions in any way whatever in connection with the matter from Mr. Beale, the deputy in charge of the office?

223 Mr. WHITE: I object to that as immaterial.

WITNESS: Shall I answer?

Mr. MERILLAT: Yes, sir.

A. Mr. Beale told me to be sure to serve it on this particular man and to note the place where he lived on the back of it and what time it was.

Q. Is it usual and customary to note those things or to get special directions with reference to them? A. No, sir; only we do once in a while. I had a case that I did the other day.

Mr. MERILLAT: Counsel desire to offer in evidence the subpœna duces tecum that was served by the marshal subject to any objection as to competency or materiality.

Mr. WHITE: Objected to as immaterial and to the introduction of any of the different matters in any other case than the one in which the subpœna was issued. I object further that it is irrelevant.

CLAYTON M. NASH.

Signed for the witness by me by consent and agreement of counsel this 27th day of October, A. D. 1908.

EDWIN L. WILSON, *Examiner*.

By Mr. MERILLAT:

Counsel for the complainants desire to offer in evidence the deed in fee from Thomas G. Hensey to Mary B. Dodge purporting to be executed October 17th, 1901, and recorded October 26th, 224 1903, and the deed of trust from Thomas G. Hensey, and wife, to Edward S. Bond and Daniel B. Weedon, purporting to have been executed October 17th, 1901, and recorded October 22, 1901.

It is stipulated and agreed between counsel that if called Mr. Anson S. Taylor, notary public before whom the deeds were acknowledged and witnessed, would testify that from his usual and customary course of business that he took the acknowledgment of Thomas G. Hensey and his wife to the deeds on the date that his notarial certificate states.

EDWIN L. WILSON, *Examiner*.

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COMPLAINANTS' EXHIBIT B.

Thos. G. Hensey, Melville D. Hensey, Attorneys at Law, 1300 F Street N. W.

WASHINGTON, D. C., *March 28, 1894.*

This is to certify that I hold certificate No. 3, representing one tenth (1/10) interest in 9.37/100 acres of land on Broad Branch Road described in a deed dated Feb'y 12th 1891 from Melville D. Hensey to Thos. G. Hensey and John H. Soulé, Trustees, to secure me against loss for payments on a certain promissory note given in part payment on the above property discounted at the Second National Bank for \$335 dated Feb'y 28th 1894 and \$31.94 in cash already advanced on said account. I hereby agree that when John H. Soulé shall reimburse me on this account including interest I will return to him said Stock provided it does not extend beyond the time allowed by the Bank, or a limit of three years (3) from date.

THOS. G. HENSEY.

226 *Interrogatories to be Propounded to Charles W. Stevens.*

Filed September 28, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 26396.

CHARLES H. MERILLAT et al.

VS.

LYMAN D. LANDON et al.

1. State your name, age, residence, and occupation.

2. Are you, or were you interested in a syndicate with Thomas G. Hensey, holding a tract of land known as "Dry Meadows" on the Broad Branch Road, in the County of Washington, being the real estate, the subject matter of this litigation?

3. Did you at any time prior to August 1, 1903, receive reports or statements from Thom. G. Hensey, concerning the tract in question?

4. If so state the dates of the several reports or statements.

5. Did you at any time prior to August 1, 1903, receive letters or other written or printed communications from Thomas G. Hensey, relative to the affairs of the syndicate?

6. Are all the reports or statements you received relative to this property or that were sent you, prior to August 1 1903, in your possession or custody or under your control?

227 7. If your answer be no, to interrogatory number 6, then what has become of such reports or statements, to whom did you turn them over or surrender such reports, or statements, and

what reports or statements have passed out of your hands, possession or custody or control.

8. Produce and file the original of all reports or statements in your possession or under your custody or control relative to the property hereinabove referred to.

9. Are all the letters or written communications that you received from or through Thomas G. Hensey relative to this property prior to Aug. 1, 1903, in your possession or custody or under your control?

10. If your answer to interrogatory No. 9 is no, then what has become of such letters or written communications, to whom did you turn over or surrender such letters or written communications, and what letters or written communications have passed out of your possession, custody or control?

11. Produce and file the original of all letters and communications in your possession or under your custody or control relative to the property hereinabove referred to.

12. Have you any personal knowledge as to whether any of the shares or interests of members of or parties interested in what is known as the Hensey Dry Meadows syndicate other than Thomas G. Hensey shares or interests were pledged or mortgaged prior to Thomas G. Hensey undertaking to deed the land in severalty to members of the syndicate, if so state when, to whom, and for what amount.

228 13. Was your own share mortgaged or held, if so to whom?

14. Was there to your personal knowledge any charge, claim or liability held by or made by Thomas G. Hensey, against the share or interest in the syndicate of any member of the syndicate. If so state fully all your knowledge and information on this subject, giving dates, amount and nature of the claim.

15. Produce and file your original certificate or share in the Dry Meadows syndicate.

Answers of Charles W. Stevens to Interrogatories Attached to Commission Issued by the Supreme Court of the District of Columbia on the 7th Day of October, A. D. 1908, and to be Attached to said Commission and Interrogatories.

In answer to interrogatory # 1. My name is Charles W. Stevens, my age is 63 years, my residence is Nashua, New Hampshire, # 254 Main Street, and I am a contractor by occupation.

In answer to interrogatory # 2. I was interested.

In answer to interrogatory # 3. I had reports or statements in the way of letters in answer to inquiries made by me.

In answer to interrogatory # 4. I have one letter bearing date of August 28, 1895 and another letter bearing date of January
229 18, 1900, which are the only reports or statements that I have.

In answer to interrogatory # 5. The above named letters of August 28, 1895 and January 18, 1900 are the only letters or printed communications relative to the affairs of the syndicate.

In answer to interrogatory # 6. The above are all that I recall and all I have in my possession at this time.

In answer to interrogatory # 7. I have never turned over or surrendered any reports or statements to any other person and I know of no reports or statements that have passed out of my hands, possession, custody or control.

In answer to interrogatory # 8. I produce and hand to you, the Commissioner, the above named letters of August 28, 1895 and January 18, 1900, to attach to my deposition as required in the question.

In answer to interrogatory # 9. I don't recall any others than those above mentioned.

In answer to interrogatory # 10. I have turned over no such nor have any passed out of my possession to my knowledge.

In answer to interrogatory # 11. I produce and file herewith, letter dated May 8, 1893 from Thomas G. Hensey; letter of April 20, 1894 from Thomas G. Hensey; letter of March 1, 1895 from Thomas G. Hensey; letter of June 1, 1905 from Thomas G. Hensey accom-

panied by statement of same date relative to taxes, release etc.;
230 letter of December 19, 1905 from Thomas G. Hensey and receipt of same date for Twenty-six and 79/100 Dollars for taxes paid by Mr. Hensey for me; letter of May 17, 1906 acknowledging taxes and letter of July 31, 1906 from Thomas G. Hensey. These are all the letters and communications in my possession or under my control from Mr. Hensey.

In answer to interrogatory # 12. The only knowledge that I have as to any mortgage or pledge was what is contained in the letters of Thomas G. Hensey filed herewith.

In answer to interrogatory # 13. My own share was never mortgaged.

In answer to interrogatory # 14. I never knew of any such charge, claim or liability.

In answer to interrogatory # 15. I produce and file herewith certificate # 4 as is required.

CHARLES W. STEVENS.

231 Thos. G. Hensey & Co., Real Estate, Loans and Insurance,
No. 1300 F Street Northwest.

C. W. Hoite, Comr.
Telephone Call 1165-2.

WASHINGTON, D. C., Jan. 18, 1900.

Hon. Chas. W. Stevens, # 254 Main Street, Nashua, N. H.

MY DEAR MR. STEVENS: Your letter of the 16th inst. at hand and in reply thereto, I have to say that there have been no sales made in the vicinity of Chevy Chase for some time, that I am aware of.

Chevy Chase, itself, is a beautiful place and growing every day with fine houses, electric lights, water and sewer. With rapid transit, which it has, I see no reason for the future development of our land. I have allowed a colored man, for the past few years, to cultivate the ground, for the reason that the under brush had grown

so that the land did not show as well as it would under cultivation. I have received no rent of course. I would like to have done so but could find no one to take it except by building a house, which I was not ready to do. I am anxious to dispose of this land, even at a small profit, as my holdings there, are the same as when you entered being 6/10 of the whole. Should we be fortunate enough, I am speaking commercially and not politically, to re-elect Mr. McKinley as president, this fall, I have no doubt we shall be able to dispose of our holding shortly after the election, with a profit.

With kindest and best regards, I remain,

Very respectfully,

THOS. G. HENSEY.

Dict. T. G. H.

232 Thos. G. Hensey & Co., Real Estate, Loans and Insurance,
Room 405 Colorado Bldg., 14th and G Sts. N. W.

C. W. Hoite, Comr.
Telephone Call, Main 1165.

WASHINGTON, D. C., *June 1st*, 1905.

*Taxes, Release, Recording and Change of Trustee Broad Branch
Property from 1891 to 1905.*

1891 Nov. 30th 2nd half tax 1891.....	\$2.82
1892 Nov. 30th 1st half 1892.....	2.82
1892 May 31st 2nd half tax 1892.....	2.82
1893 May 31st All tax 1893.....	5.64
1893 Nov. 29th 1st half tax 1894.....	14.10
1894 May 31st 2nd half tax 1894.....	14.10
1895 May 31st All tax 1895.....	28.20
1895 Nov. 30th 1st half tax 1896.....	14.10
1896 May 31st 2nd half 1896.....	14.10
1898 March 31st All 1897.....	21.88
1899 February 28th All 1898.....	21.06
1900 February 28th All tax 1899.....	21.06
1901 February 12th All tax 1900.....	10.53
1902 March 17th All tax 1901.....	10.34
June 17th All tax 1902.....	9.78
1903 Sept. 15th All tax 1903.....	22.
1904 August 31st All tax 1904.....	21.78
1905 June All tax 1905.....	21.35
1892 April 15th Releasing Trust & Recording.....	6.
1894 February 28th Changing Trustee & Recording.....	3.50
	<hr/>
	\$267.98

233 Thos. G. Hensey & Co., Real Estate, Loans, and Insurance,
Room 405 Colorado Bldg., 14th and G Sts. N. W.

Telephone Call, Main 1165.
C. W. Hoite, Com'r.

WASHINGTON, D. C., *June 1st, 1905.*

Colonel Charles W. Stevens, Nashua, New Hampshire.

DEAR COLONEL: I have been hoping every season, for many years, to sell the Broad Branch property at a satisfactory price but without realization, unfortunately, we bought this land when prices here were abnormal, and while it is true, the improvements at Chevy Chase have been many, still our land is not yet sufficiently developed to sell readily and at a price that would pay us a profit on our investment.

I am sorry that it has turned out so, but I hope for an advantageous sale before long.

I have paid the taxes myself including 1902, without the other Stockholders paying their share, since which time the others have paid, and you are the only one, whom I have not called on. Your share of the taxes for 14 years is \$26.79, for which amount I will ask to remit check.

I have by personal effort kept the taxes down, as Agricultural land at \$150 an acre, but a new assessment of \$500 an acre is laid for the coming three years, which is unreasonable, and which I hope to defeat.

234 The title to the property is clear of all encumbrances, except this year's taxes which I will pay this month.

I enclose herewith an itemized statement of each year's taxes from the beginning.

With kindest and best regards I remain,

Yours respectfully,

THOS. G. HENSEY.

235 Thos. G. Hensey & Co., Real Estate, Loans, and Insurance,
Room 405 Colorado Bldg., 14th and G Sts. N. W.

Telephone Call, Main 1165.
C. W. Hoite, Com'r.

WASHINGTON, D. C., *Dec. 19, 1905.*

Col. Charles W. Stevens, Nashua, New Hampshire.

MY DEAR COLONEL: Your letter of the 18th inst., containing check for taxes on the Broad Branch land, received, and receipt is herewith enclosed for same.

This pays the taxes to the 30th of June, 1905. As I stated to you in my letter at that time, the assessors had concluded to increase our taxes from agricultural land to non-productive town lots. At first it was \$600 an acre, but latterly they have made it \$500. The tax will be due and payable this coming May, and your one-tenth part will be about \$7.12.

I have been advertising this property very extensively, this fall, up to two weeks ago, when I was enjoined by a crowd of conspirators who stopped me from selling my own interest therein, but as soon as the case is heard, which I expect will be in the near future I will take it up and advertise it again and hope to sell it.

As you know, I hold five-tenths of this property, the other five-tenths being held. one tenth by the heirs of Mrs. Dyer, one-
 236 tenth by Mrs. Holmes, one-tenth by John H. Soule, one-tenth by L. D. Landon, and one-tenth by yourself. The five-tenths held by myself I was obliged to hypothecate three-tenths to one party for a loan of \$2500 and two-tenths to another party for \$1600. This state of things has been brought about by these conspirators for the purposes of blackmail. Your interest, however, is perfectly safe as everybody else's is in this property, the same being entirely free of debt and taxes paid to June 20, 1905.

I may want your affidavit that you are the bona fide owner of one-tenth interest to file in this suit. If it is needed, I will prepare it myself and will ask you to subscribe to it before a notary public. There is no cause for alarm; this matter is simply annoying; that is all.

Respectfully your friend,

THOS. G. HENSEY.

611

WASHINGTON, D. C., *Dec.* 19, 1905.

Received from Colonel Charles W. Stevens Twenty-six and 79/100 Dollars in full of all taxes for my one-tenth interest in Broad Branch property in the District of Columbia, bills being in my possession.

THOS. G. HENSEY.

C. W. HOITE, *Com'r.*

237 Thos. G. Hensey & Co., Real Estate, Loans and Insurance,
 Room 405 Colorado Bldg., 14th and G Sts. N. W.

Telephone Call, Main 1165.

C. W. Hoite, Com'r.

WASHINGTON, D. C., *July* 31, 1906.

Col. Charles W. Stevens, Nashua, N. H.

DEAR COLONEL: Enclosed, find copy of the answer of Thomas G. Hensey and Melville D. Hensey to Equity Bill 26396, respecting the Broad Branch Syndicate designated as "Dry Meadows," for your information; also a copy of your answer which you will have to sign twice and subscribe to before a notary public.

I beg to call your attention to my letter of May 21st in which I informed you of the conveyance by the trustees Melville D. Hensey and myself by deed in fee to each of the respective shareholders in the above land.

This answer is necessary as the petition of the complainants ask that process may be served upon you by publication and under the laws of the District of Columbia, after that was accomplished, judgment would be taken against you pro-confesso. This matter should be attended to immediately as the time is limited,—this week at all events.

Under advice of my attorney, Edward H. Thomas, Esq., I have not filed an appearance for you as he thought it would be prejudicial to your interest to do so or to appear as your attorney. You
 238 can return these papers to me or to him and he will attend to the matter for a very reasonable fee.

Very much regretting that you have been dragged into a suit in equity, which is a matter over which we have no control, and with assurances that I will do everything in my power to protect your interests, and with kindest wishes, I am,

Very respectfully yours,

THOS. G. HENSEY.

P. S.—I enclose a copy of the bill.

T. G. H.

239

Certificate No. 4.

Whole Number of Shares, 10; of \$1,350 Each.

Broad Branch Road, 9 $\frac{37}{100}$ Acres.

C. W. Hoite, Com'r.

Know all men by these presents, That we, Thomas G. Hensey and John H. Soulé, as joint tenants in fee, under a certain deed from Melville D. Hensey, unmarried, dated February 12, 1891, and recorded in Liber No. 1568, folio 8, et seq., one of the Land Records of the District of Columbia, hold the real estate situate in the County of Washington, District of Columbia, and described as follows: "Part of the tract of land in the County of Washington, in the District of Columbia, known as "Dry Meadows"; beginning for the same at a stone, a corner of the late Charles R. Belt's land, and running thence south $41\frac{3}{4}$ degrees, east 57.84 perches to a stone, thence north 44 degrees, east 13.68 perches to a stone on Broad Branch Road, thence north $15\frac{1}{2}$ degrees, west 58.12 perches to Jones' line, thence north 60 degrees, west 2.32 perches to a stone, and thence south $50\frac{3}{4}$ degrees, west 38 perches to the place of beginning;" containing 9 $\frac{37}{100}$ acres of land, more or less, and fully described in said deed; subject, however, to trusts for \$9,000, upon certain trusts as hereinafter stated.

Whereas, Charles W. Steven has contributed one tenth of the sum expended for the purchase of said real estate, and is, therefore, entitled to one tenth undivided interest in said real estate:

Now, therefore, In consideration of the premises and said payment, receipt whereof from said Charles W. Stevens is hereby
 240 acknowledged, we, the said Thomas G. Hensey and John H. Soulé, do hereby declare that we hold the said real estate upon trusts as follows, for said Charles W. Stevens, his heirs and assigns, to the extent of the aforesaid undivided interest; that is to say; in and upon the trusts set forth and declared in said deed:

This declaration, and the interest hereunder, shall, at all times, be subject to assessment for its proportionate part of money neces-

sary to pay the aforesaid incumbrances, and interest thereon, and expenses incurred in the execution of the trusts as provided in the deed to said trustees, hereinbefore recited, which said assessments shall be payable within 30 days after written notice thereof shall have been mailed, post paid, to the person assessed, or personally served upon him, and, in default of such payment, the said trustees, or the survivor of them, is hereby authorized to sell the interest of such person so in default either at public or private sale, after such notice and upon such terms as they, or the survivor, shall deem best, and to transfer such interest to the purchaser, free from liability on his part, for the application of the purchase money. In the event of any such sale the proceeds shall first be applied to payment of assessments, in default with interest at 6 per cent. from date of notice until paid, and the surplus shall be paid over to the owner of such interest, his heirs or assigns.

This declaration, and the interest hereunder, may be transferred by writing, under seal, and upon such transfer the assigned
 241 declaration shall be surrendered to the trustees and a new declaration issued in the name of the purchaser, and the trustees shall not be bound to take notice of the rights of a transferee who fails to surrender such assigned declaration and to procure a new one in his own name.

Any transferee of such declaration, and interest hereunder, shall thereby be subrogated to all the rights, and subjected to all the liabilities, of the original holder; and the said Charles W. Stevens as evidence of the acceptance of this declaration, and to confer all necessary power upon said trustees, and the survivor of them in the premises, as above set forth, has hereunto set his hand and seal the day and year last herein written.

Witness our hands and seals this 22 day of August, 1891, at Washington, D. C.

THOS. G. HENSEY.	[SEAL.]
JNO. H. SOULÉ.	[SEAL.]
— — — — —	[SEAL.]

Signed, sealed and delivered in presence of
 — — — — —

242 *Testimony on Behalf of Defendants.*

Filed October 27, 1908.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 26396.

CHARLES H. MERILLAT et al.

vs.

THOMAS G. HENSEY et al.

WASHINGTON, D. C., October 24th, 1908.

Met pursuant to agreement of counsel at the law offices of William Henry White, Esq., Columbian Building, for the purpose of taking testimony for and on behalf of the defendants.

Present: Messrs. Chas. H. Merillat and Mason N. Richardson on behalf of the complainants; William Henry White, Esq., on behalf of the defendants; Examiner and witness.

JOHN H. SOULE, produced as a witness on behalf of the defendants, and being duly sworn, testified as follows:

By Mr. WHITE:

Q. What is your residence? A. The Maury, 19th and G Streets, Northwest.

243 Q. You are engaged in the real estate business in the District of Columbia? A. I am.

Q. And you are the John H. Soule who was one of the trustees with Thomas G. Hensey and with him held title to the land herein involved and known as "Dry Meadows"? A. Yes, sir.

Q. There is in the record evidence of a conveyance by you and Thomas G. Hensey, as such trustees, to Walter R. Hensey, and a conveyance by Walter R. Hensey to Thomas G. Hensey and Melville D. Hensey, as trustee, the conveyances being of this property. What was the purpose of those conveyances, Mr. Soule?

Mr. MERILLAT: We object to the introduction of this testimony as immaterial, irrelevant and incompetent for the reason that if the same be not introduced for the purpose of attacking the decree of Justice Stafford it can have no pertinency whatever. If it is introduced for the purpose of attacking the decree of Justice Stafford which found specifically that the interest of Thomas G. Hensey in "Dry Meadows" was purchased with our money, then it is irrelevant, incompetent and immaterial because there cannot be litigated or relitigated in this action the question there decided.

(Hereupon the question was read to the witness.)

A. Mr. Hensey suggested to me that as I was in New York a good part of the time it would be more convenient for him to have some one substituted as trustee in my place and asked me if I had any objection to it and I had not and the transfer was made.

244 Mr. MERILLAT: We move to strike out the answer on the grounds heretofore stated.

By Mr. WHITE:

Q. Were new certificates issued at the time of the transfer to replace the old ones, Mr. Soule?

Mr. MERILLAT: Is it stipulated and agreed that the objection heretofore entered may be considered as interposed to all this line of testimony?

Mr. WHITE: Yes, sir.

It is stipulated and agreed by and between counsel that the objection and motion to strike out heretofore made can be considered as interposed to all this line of testimony.

— — —, Examiner.

A. I am under the impression there were.

Mr. MERILLAT: No cross examination.

JOHN H. SOULE.

Signed for the witness by me by consent and agreement of counsel,
this 27 day of October, A. D. 1908.

EDWIN L. WILSON, *Examiner*.

It is hereby stipulated and agreed by and between counsel that Mr. James F. L. Karrick, if called as a witness, would testify that he is the present custodian of the certificates and collateral note heretofore offered in evidence and that he found the same among the papers of Lyman D. Landon, and that he holds them under the
245 arrangement heretofore testified to by him between Landon, Mr. Karrick's wife and Mr. Landon's brother.

It is also agreed and stipulated that the endorsements on the back of certificate number one are in Landon's hand writing.

It is further agreed and stipulated that if Mr. Karrick were present he would testify that the physical and mental condition of Mr. Landon today is the same as it was when he, Karrick, heretofore testified in the cause.

It is further stipulated and agreed that the above shall be considered by the Court the same as if Mr. Karrick had been duly sworn and examined as a witness in this cause.

It is agreed that this stipulation and agreement is made subject to objections, if any, as to relevancy or materiality of the testimony.

EDWIN L. WILSON, *Examiner*.

Mr. WHITE: I offer in evidence the statement headed: "T. G. Hensey, Debtor, to L. D. Landon, Creditor," ending with the words "Settled October 1st, 1901" heretofore identified and marked "Defendants' Exhibit J. L. K. number 1."

Mr. MERILLAT: Counsel for the complainants object to the offer of the foregoing paper on the ground that it is not original evidence; that there is no evidence whatever of the delivery of the paper, and furthermore that there has been a spoliation of all books by both
246 Hensey and Landon, and furthermore that there is no evidence that the foregoing statement is a complete statement of transactions for the period named between Hensey and Landon, while on the other hand there is positive evidence by Landon himself that the statement is not a complete statement of their relations.

Said paper offered in evidence is in words and figures following, to wit:

T. G. Hensey, Dr., to L. D. Landon, Cr.

To Cash to Loan on Interest for Me for a Time.

Aug. 11, 1887.	To cash..	\$6000.00	Sept., 1894.	By cash ...	\$400.
May, 1889.	" "	1400.	Jan., 1897.	" " ...	150.
1900.	" "	900.	Jan., 1898.	" " ...	220.
			Apr. 1, 1899.	" " ...	500.
			Apr., 1899.	Interest....	450.
			Apr., 1899.	"	520.
			Apr. 10, 1900.	By cash ...	610.
				Interest....	200.
				By note of Mr. Dodge.....	5250.
<hr/>			<hr/>		
\$8300.			Total..... \$8300.		

Account settled October, 1901.

Mr. WHITE: I offer in evidence certificate number two issued to Kate H. Dyer for one-tenth interest, signed by Thomas G. Hensey and John H. Soule and Kate H. Dyer.

Mr. RICHARDSON: No objection is made to the form of proof in so far as the signatures are concerned, but we object to the
 247 paper itself on the grounds heretofore stated in an objection to an offer of evidence while Mr. Soule was upon the witness stand, namely, that if the same be not introduced for the purpose of attacking the decree of Justice Stafford it can have no pertinency whatever; if it be introduced for the purpose of attacking the decree of Justice Stafford which found specifically that the interest of Thomas G. Hensey in "Dry Meadows" was purchased with our money, then it is irrelevant, incompetent and immaterial because there cannot be litigated or re-litigated in this action the question there decided.

Said certificate is in words and figures following, to wit:

Certificate No. 2.

Whole Number of Shares, 10; of \$1,350 Each.

Broad Branch Road, 9 37/100 Acres.

Know all men by these presents, That we, Thomas G. Hensey and John H. Soule, as joint tenants in fee, under a certain deed from Melville D. Hensey, unmarried, dated February 12, 1891, and recorded in Liber No. 1568, folio 8, et seq., one of the land records of the District of Columbia, hold the real estate situate in the County of Washington, District of Columbia, and described as follows: "Part of the tract of land in the County of Washington, in the District of Columbia, known as "Dry Meadows;" beginning for the same at a stone, a corner of the late Charles R. Belt's land, and running thence
 248 south 41¾ degrees, east 57.84 perches to a stone, thence north 44 degrees, east 13.68 perches to a stone on Broad Branch Road, thence north 15½ degrees, west 58.12 perches to Jones'

line, thence north 60 degrees, west 2.32 perches to a stone, and thence south $50\frac{3}{4}$ degrees, west 38 perches to the place of beginning:" containing $9\frac{37}{100}$ acres of land, more or less, and fully described in said deed; subject, however, to trusts for \$9,000 upon certain trusts as hereinafter stated.

Whereas, Kate H. Dyer has contributed one tenth of the sum expended for the purchase of said real estate, and is, therefore, entitled to one-tenth undivided interest in said real estate:

Now, therefore, in consideration of the premises and said payment, receipt whereof from said Katie H. Dyer is hereby acknowledged, we, the said Thomas G. Hensey and John H. Soule do hereby declare that we hold the said real estate upon trusts as follows, for said Kate H. Dyer, her heirs and assigns, to the extent of the aforesaid undivided interest; that is to say; in and upon the trusts set forth and declared in said deed:

This declaration, and the interest hereunder, shall, at all times, be subject to assessment for its proportionate part of money necessary to pay the aforesaid incumbrances, and interest thereon, and expenses incurred in the execution of the trusts as provided in the deed to said trustees, hereinbefore recited, which said assessments

249 shall be payable within 30 days after written notice thereof shall have been mailed, post paid, to the person assessed, or personally served upon him, and, in default of such payment, the said trustees, or the survivor of them, is hereby authorized to sell the interest of such person so in default either at public or private sale, after such notice and upon such terms as they, or the survivor, shall deem best, and to transfer such interest to the purchaser, free from liability on his part, for the application of the purchase money. In the event of any such sale the proceeds shall first be applied to payment of assessments, in default with interest at 6 per cent. from date of notice until paid, and the surplus shall be paid over to the owner of such interest, his heirs or assigns.

This declaration, and the interest hereunder, may be transferred by writing, under seal, and upon such transfer the assigned declaration shall be surrendered to the trustees and a new declaration issued in the name of the purchaser, and the trustees shall not be bound to take notice of the rights of a transferee who fails to surrender such assigned declaration and to procure a new one in his own name.

Any transferee of such declaration, and interest hereunder, shall thereby be subrogated to all the rights, and subjected to all the liabilities, of the original holder; and the said Kate H. Dyer as evidence of the acceptance of this declaration, and to confer all necessary power upon said trustees, and the survivor of them in
250 the premises, as above set forth, has hereunto set *his* hand and seal the day and year last herein written.

Witness our hands and seals this — day of — 1891, at Washington, D. C.

THOS G. HENSEY. [SEAL.]
JNO. H. SOULE. [SEAL.]
KATE H. DYER. [SEAL.]

Signed, sealed and delivered in presence of
— — —.

Stipulation.

In the Supreme Court of the District of Columbia.

Equity. No. 26396.

CHARLES H. MERILLAT et al., Complainants,
vs.
MELVILLE D. HENSEY et al., Defendants.

For the purpose of saving time and expense in taking testimony it is hereby stipulated and agreed by and between complainants and counsel for defendants, Landon, Holmes, Kimberly and Dyer, as follows:

1. The following certificates numbered one and six are now in the possession of defendant, Landon, or his assigns under the assignment as testified to by witness Karrick.
- 251 2. All the signatures on the face and back of all the certificates and on the collateral notes herein mentioned are genuine, formal proof thereof being hereby waived, complainants reserving all rights of objection they would have had if formal proof of writings had been given.
3. Certificate No. 1 is in words and figures following, to wit:

"Certificate No. 1.

Whole Number of Shares, 10; of \$1,350 Each.

Broad Branch Road, 9.37 Acres.

Know all Men by these Presents, That we, Thomas G. Hensey and John H. Soule, as joint tenants in fee, under a certain deed from Melville D. Hensey, unmarried, dated February 12, 1891, and recorded in Liber No. 1568, folio 8 et seq., one of the Land Records of the District of Columbia, hold the real estate situate in the County of Washington, District of Columbia, and described as follows: "Part of the tract of land in the County of Washington, in the District of Columbia, known as *"Dry Meadows,"* beginning for the same at a stone, a corner of the late Charles R. Belt's land, and running thence south $41\frac{3}{4}$ degrees, east 57.84 perches to a stone, thence north 44 degrees, east 13.68 perches to a stone on Broad Branch Road, thence north $15\frac{1}{2}$ degrees, west 58.12 perches to Jones' line, thence north 60 degrees, west 2.32 perches to a stone, and thence south $50\frac{3}{4}$ degrees, west 38 perches to the place of beginning;" containing
252 ing 9.37 acres of land, more or less, and fully described in said deed; subject, however, to trusts for \$9,000, upon certain trusts as hereinafter stated.

Whereas, Lyman D. Landon has contributed one tenth of the sum expended for the purchase of said real estate, and is, therefore, entitled to one tenth undivided interest in said real estate:

Now, therefore, In consideration of the premises and said payment,

receipt whereof from said Lyman D. Landon is hereby acknowledged, we, the said Thomas G. Hensey and Melville D. Hensey, do hereby declare that we hold the said real estate upon trusts as follows, for said Lyman D. Landon, his heirs and assigns, to the extent of the aforesaid undivided interest; that is to say; in and upon the trusts set forth and declared in said deed.

This declaration, and the interest hereunder, shall, at all times, be subject to assessment for its proportionate part of money necessary to pay the aforesaid incumbrances, and interest thereon, and expenses incurred in the execution of the trusts as provided in the deed to said trustees, hereinbefore recited, which said assessments shall be payable within 30 days after written notice thereof shall have been mailed, post paid, to the person assessed, or personally served upon him, and, in default of such payment, the said trustees, or the survivor of them, is hereby authorized to sell the interest of such person so in default either at public or private sale, after such notice and upon such terms

as they, or the survivor, shall deem best, and to transfer
253 such interest to the purchaser, free from liability on his part, for the application of the purchase money. In the event of any such sale the proceeds shall first be applied to payment of assessments, in default with interest at 6 per cent. from date of notice until paid, and the surplus shall be paid over to the owner of such interest, his heirs or assigns.

This declaration, and the interest hereunder, may be transferred by writing, under seal, and upon such transfer the assigned declaration shall be surrendered to the trustees and a new declaration issued in the name of the purchaser, and the trustees shall not be bound to take notice of the rights of a transferee who fails to surrender such assigned declaration and to procure a new one in his own name.

Any transferee of such declaration, and interest hereunder, shall thereby be subrogated to all the rights, and subject to all the liabilities, of the original holder; and the said Lyman D. Landon as evidence of the acceptance of this declaration, and to confer all necessary power upon said trustees, and the survivor of them in the premises, as above set forth, has hereunto set his hand and seal the day and year last herein written.

Witness our hands and seals this 19th day of August, 1901, at Washington, D. C.

THOS. G. HENSEY.	[SEAL.]
MELVILLE D. HENSEY.	[SEAL.]
LYMAN D. LANDON.	[SEAL.]

Signed, sealed and delivered in presence of
MATTHEW LOVEAIRE.

254 On the back thereof in lead pencil is the following:
L. D. Landon.
Broad Branch.
Paid \$1200.

4. Certificate No. 6 is identical with certificate No. 1 except that it is dated the 5th day of September, 1901, is issued to Thomas G. Hensey, who signs as accepting and also as trustee with Melville D. Hensey; at the beginning the name John H. Soule is cancelled with a pen and the name Melville D. Hensey is written above it, and the certificate is for two shares. The indorsement thereon is as follows:

For value received I hereby transfer

THOMAS G. HENSEY.

September 5, 1901.

The promissory note attached to said certificate No. 6 is as follows:

\$1600.

WASHINGTON, D. C., *Sept.* 5, 1901.

One year after date I promise to pay to order of Lyman D. Landon sixteen hundred and 00/100 Dollars, at 1300 F Street, N. W. without defalcation, for value received, with interest at the rate of 6 per centum per annum from the date hereof till paid, and as collateral security for the payment of this obligation on the day of the maturity thereof, have delivered therewith the following, that is to say:

255 Certificate #6, two shares, constituting two-tenths of the Broad Branch property, originally held by Thos. G. Hensey and John H. Soule as Trustees, which property I hereby certify, it being one of the conditions upon which this loan is made, belongs absolutely to me, that there are no prior liens against it, and that I have a right to pledge it, I hereby authorize and empower the holder of this obligation (provided the same be not paid at maturity) to sell said collateral at public or private sale, at the option of the said holder, and to transfer, assign, and deliver the same to the purchaser or purchasers thereof without reference or notice to me; and if in the opinion of the holder of this obligation the value of said collaterals or any substitutes hereafter deposited should at any time be less than Sixteen hundred dollars, the undersigned shall upon demand furnish such further security as will be satisfactory to said holder, and in case of failure so to do, this note thereupon, at the option of said holder, shall become due and payable forthwith, and the whole or any part or parts of said securities, substitutes, or additions, may be sold as herein provided, at the option of said holder, and in case of any sale or other disposition of any of the securities aforesaid, the proceeds thereof shall be applied in the first place to the payment of all costs and expense incurred; in the second place to the payment of the amount then due on this obligation; and lastly to return to me whatever is due, if any, may then remain; it being also distinctly understood that should there be any

256 deficiency, I further promise and agree to pay the same to the holder of this obligation on demand.

It is also agreed and understood that upon sale of any of said collaterals, holders of this obligation at their option may become the purchaser thereof, and hold the same thereafter in their own right, absolutely free from any claim of the undersigned.

This deposit of security is without prejudice to the right of the

holder of this note at his option to enforce collection of the same after its maturity by suit or in other lawful manner.

No. —. Due Sept. 5/02.

THOS. G. HENSEY,
Address, 1300 F Street N. W.

Witness:

MATTHEW LOVEAIRE.

The indorsements on the back of said note are in handwriting of Thomas G. Hensey and are as follows:

Interest paid Sept. 5/03.	Certificate No. 6.
Interest paid Sept. 5/04.	Two-tenths of Broad
Interest paid Sept. 5, 1905.	Branch.

5. Because of the age and infirmity from deafness of the defendant, Mrs. Kimberly, and in order to dispense with the necessity of having her to testify, it is agreed that if called as a witness she would testify as hereafter stated and that the Court on any hearing of this cause may consider said statement as her testimony duly given in the cause.

257 Defendant, Mrs. Kimberly, in regular course of mail received from Thomas G. Hensey the following letter:

Thos. G. Hensey, Real Estate, Loans, and Insurance, No. 1300 F Street Northwest.

Telephone Call, Maine 1165.

WASHINGTON, D. C., Nov. 4, 1903.

Mrs. S. V. Kimberly.

DEAR MADAM: I will give you my personal note for \$2500. at 5½% per annum, secured by three shares of stock representing nearly three (3) acres of a 9.4 acres tract of land on the Broad Branch Road, abutting on Chevy Chase Circle, District of Columbia, which cost for the whole, including the carrying \$23,000.

This interest represents 3/10 or \$6900. *Title Co.'s Certificate to date and Tax Certificate.* Collateral note on or before three years, interest payable quarterly.

The prices for land in Chevy Chase run from \$.15 a foot to \$.35 a foot. This land at \$.10 a foot would be \$4300. an acre or \$12,000. for three shares. This is one of the most promising sections of Washington; its future is certain. You can see this ample security.

The carrying means the taxes paid and 5% interest for the money. There are no assessments whatever by way of mortgage or deed of trust.

A collateral note describes the stock which will be assigned to you.

258 The whole tract is for sale (as all vacant land, pretty much, in the District is) for \$40,000.

Yours, &c.,

THOS. G. HENSEY.

Thereafter said Hensey delivered to her the joint certificate of the Real Estate Title Insurance Company of the District of Columbia and the Columbia Title Insurance Company of the District of Columbia issued in blank and duly certifying that the title to the property involved in this suit "is considered now good, according to the record, in Thomas G. Hensey and Melville D. Hensey, trustees, under deed in trust, item No. 8 noted in said schedule 'A,' subject only to such taxes and assessments as may be due;" that item No. 8, schedule "A" is as follows:

No. 8.

Walter R. Hensey, Unmarried,
to
Thomas G. Hensey, Melville D. Hensey.

Deed in trust.

Dated January 30, 1894.

Recorded February 28, 1894.

Liber 1891, folio 184.

Caption.

In trust for the benefit of contributors as tenants in common according to their respective contributions, to improve and encumber by mortgage or trust or otherwise as grantees deem best, lender discharged, to lease or sell and convey in fee simple or less estate as grantees deem best for interest of all concerned, purchaser discharged, to make distribution among persons interested as tenants in common, according to their interests.

259 Said Thomas G. Hensey delivered to her certificate No. 5 which is identical with certificate No. 1 heretofore copied in this record except that it is dated November 9th, 1903, is for his three-tenths interest, issued to Thomas G. Hensey and the signatures are Thomas G. Hensey, Melville D. Hensey and Thomas G. Hensey with E. Olivia Johnson and D. B. Weeden as witnesses and the printed name of John H. Soule as trustee is unchanged. The indorsement on the back of said certificate is as follows:

For value received, I hereby transfer the within mentioned shares of stock to Susan V. Kimberly.

Witness my hand and seal this 9th day of November, 1903.

THOS. G. HENSEY.

Witness:

E. OLIVIA JOHNSON.

D. B. WEEDEN.

Attached to said certificate is the following collateral note:

\$2500.

WASHINGTON, D. C., November 9, 1903.

On or before three years after date I promise to pay to the order of Susan V. Kimberly, Twenty-five hundred and 00/100 Dollars, at 1300 F St., N. W. without defalcation, for value received, 260 with interest at the rate of 5½ per centum per annum from the date hereof till paid, and as collateral security for the payment of this note, and also as collateral security for all other

present or future demands of any and all kinds, of the said Susan V. Kimberly against the undersigned, have delivered therewith the following, that is to say 9 37/100 acres of land on the Broad Branch Road, known as and described as Dry Meadows and conveyed to the Trustees in Trust, February 12, 1891. Which collateral I hereby authorize and empower the holder of this obligation (provided the same be not paid at maturity) to sell either at the stock exchange, at public or private sale, at the option of the said holder, and to transfer, assign, and deliver the same to the purchaser or purchasers thereof without reference or notice to the undersigned, and if, in the opinion of the holder of this obligation, the value of said collaterals, or any substituted or hereafter deposited, should at any time be less than 2500 Dollars, the undersigned shall, upon demand, furnish such further security as will be satisfactory to said holder, and in case of failure so to do, this note thereupon, at the option of said holder, shall become due and payable forthwith, and the whole or any part or parts of said securities or substitutes or additions may be sold as herein provided at the option of said holder, and in case of any sale or other disposition of any of the securities aforesaid, the

proceeds thereof shall be applied in the first place to the payments of all costs and expenses incurred; in the second place, to the payment of the amount then due on this note or any other liability as aforesaid to the said Susan V. Kimberly, and, lastly, to return to the undersigned whatever residue, if any, may then remain; it being also distinctly understood that should there be any defalcation I further promise to pay the same to the holder of this obligation on demand.

It is also agreed and understood that upon the sale of any of the said collaterals, the holder of this obligation, at its option, may become the purchaser thereof, and hold the same thereafter in its own right, absolutely free from any claim of the undersigned.

This deposit of security is without prejudice to the right of the holder of this note at its option to enforce collection of the same after its maturity by suit or in other lawful manner.

THOS. G. HENSEY.

Witness:

E. OLIVIA JOHNSON.

On the back of said collateral note appears the following indorsements in the handwriting of Thomas G. Hensey:

Interest pd. to Feb. 9, 1904. \$34.37.

Interest pd. to May 9, 1904.

Interest pd. to Aug. 9, 1904.

Interest pd. to Nov. 9, 1904.

Interest pd. to Feb. 9, 1905.

262 Interest pd. to May 9, 1905.

Interest pd. to Aug. 9, 1905.

Interest pd. to Nov. 9, 1905.

Interest pd. to Feb. 9, 1906.

Interest pd. to May 9, '06.

Interest pd. to Aug. 9, 1906.

Interest pd. to Nov. 9, 1906.

On the delivery to her of said certificate of the Title Companies, said certificate No. 5 and said collateral note, Mrs. Kimberly paid to said Thomas G. Hensey the sum of \$2500. She then had no actual knowledge as to the pendency of Equity Cause No. 24,084 or any other suit against said Hensey. She received from said Hensey the payments of interest indorsed on said collateral note. She is in no way related to said Hensey. She has been in possession of the certificates and collateral note since their date. No payments have been made on said note excepting the interest payments indorsed thereon.

6. It is further stipulated and agreed that on the request of either party either of the certificates or notes herein mentioned will be exhibited to the court on any hearing of this cause.

CHARLES H. MERILLAT,
MASON N. RICHARDSON,

Complainants.

E. H. THOMAS AND
WM. HENRY WHITE,

Counsel for Def'ts Named,

By WM. HENRY WHITE.

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DEFENDANTS' EXHIBIT J. L. K. No. 1.

T. G. Hensey, Dr., to L. D. Landon, Cr.

To Cash to Loan on Interest for Me for a Time.

Aug. 11, 1887.	To Cash..	\$6000.00	Sept., 1894.	By cash..	\$400.00
May, 1889.	" "	1400.00	Jan., 1897.	" "	150.00
1900.	" "	900.00	Jan., 1898.	" "	220.00
			Apr. 1, 1899.	" "	500.00
			Apr., 1899.	Interest..	450.00
			Apr., 1899.	" ..	520.00
			Apr. 10, 1900.	By cash..	610.00
				Interest..	200.00
				By note of Mr. Dodge...	5250.00
<hr/>			<hr/>		
		\$8300.00	Total.....		\$8300.00

Account settled October, 1901.

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Opinion.

Filed April 30, 1909.

Equity. No. 26396.

MERILLAT et al.

v.

KIMBERLY et al.

There is no evidence which draws my mind to the conclusion that at the time of the execution of the deed sought to be set aside, either

Mrs. Kimberly or Landon were in any way conscious of, or concerned in a fraudulent enterprise, either to anticipate the decree in Equity No. 24084 or to accomplish any other illegitimate or fraudulent end; therefore the only remaining ground upon which the deed can be avoided is that the doctrine of "lis pendens" operates against them. With respect to this question it does not appear to be claimed that either had actual notice of the proceedings in No. 24084. The doctrine of "lis pendens" so far as involved at bar, rests upon the proposition that there is pending in a judicial tribunal a proceeding the purpose of which is to subject a rem to such disposition as the Court may order. The property conveyed by the deed which is sought to be set aside was first referred to in 24084 by the amendment filed to the bill on August 20, 1903. By paragraph 12½ of this amendment the property is described and it is averred that money illegally and wrongfully obtained by the defendant Hensey was devoted to its acquisition; the facts averred in the original
265 and amended bills show a cause of action against the defendant Hensey which would justify either of two reliefs;

1st. A money decree against him;

2nd. A pursuit of the property which the funds had procured.

But there is nothing to show that the complainants were entitled to both of these reliefs; in the nature of things they were entitled to but one or the other. The relief prayed in the amendment, which for the first time in 24084 refers to the Dry Meadows property, nowhere contemplates the pursuit of the Dry Meadows lands, but the prayer is only for a discovery; not for a subjecting of the lands. While the prayer of the amendment No. 4½ is that the defendants "be enjoined and restrained from disposing of any or all of their interests in the real estate or other property described in paragraph 12 of complainants' bill,"

and while in the prayer No. 4¾ it is prayed

"that a Trustee may be appointed to sell the interests of the defendants in the real estate or property described in paragraph 12 of the bill of complaint and in the District Investment Company."

Yet there is a distinct and definite omission of any reference in these prayers to any purpose of the complainants to pursue the Dry Meadows property and to subject it as a rem to the satisfaction of Hensey's indebtedness to them. It may be suggested that the complainants intended to subject the property; it must be answered that if they did so intend they kept the intention to themselves and did not spread it upon the records of the Court. It may be said

266 that the defendants at bar ought to have known that the complainants intended to subject the property: it must be answered that they were not required to know, nor to speculate, nor to guess about the purpose of the complainants unless that purpose was spread upon the records of the Court through the pleadings, the functions of which are to acquaint the Court with the relief which they desire. I therefore can find no escape from the conclusion that inasmuch as there is nothing upon the records of the Court which shows that the purpose of the complainants was to subject the prop-

erty, there is no room for the application of the doctrine of "lis pendens" as against those who afterwards dealt with the property. Therefore the bill must be dismissed.

WRIGHT.

Final Decree.

Filed May 7, 1909.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

Equity. No. 26396.

CHARLES H. MERILLAT et al.

vs.

MELVILLE D. HENSEY et al.

This cause coming on for hearing upon the pleadings and evidence, and after argument, and due consideration thereof, it is by the Court this 7th day of May, A. D. 1909, adjudged, ordered
267 and decreed that the bill filed in the above entitled cause be and the same hereby is dismissed, with costs to defendants.

From the foregoing decree, the complainants in open Court *having* noted an appeal to the Court of Appeals, which was by the Court allowed, and the penalty of the bond for costs on appeal fixed at one hundred dollars, or a deposit of fifty dollars in cash in lieu of bond.

WRIGHT, *Justice.*

Memorandum.

May 13, 1909.—Appeal bond approved and filed.

Stipulation of Counsel.

Filed May 24, 1909.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

Equity. No. 26396.

CHARLES H. MERILLAT et al.

vs.

MELVILLE D. HENSEY et al.

It is hereby stipulated and agreed by and between the parties hereto that the value of each and every acre of the real estate, the subject of this controversy is not less than \$2,000.00 per acre,
268 the tract containing 9 40/100 acres; that an actual bona fide offer of \$15,000.00 was made sometime ago for the property

involved, and refused, and that the parties hereto estimate the reasonable present value of the land as in excess of \$2,000.00 per acre at least.

It is further stipulated and agreed that the certificate of interest attached to the deposition of Charles W. Stevens is identical with the other certificates of interests in said lands except as to names, numbers, dates and undivided interests represented and that defendant, Mrs. Annie Holmes, was and is the holder of a certificate for an undivided one-tenth interest issued before the filing of Equity 24,084.

And it is further stipulated that the appropriate and proper parties are before the Court and that no objection shall be taken because of the death of Thomas G. Hensey in respect of the matter or question of parties.

MASON N. RICHARDSON,
CHARLES H. MERILLAT,
Sol'rs for Complainants.
E. H. THOMAS AND
WM. HENRY WHITE,
Att'ys for Def'ts except Mrs. Soule.
WALTER C. BALDERSTON,
Att'y for Mrs. Soule.

269 *Directions to Clerk for Preparation of Transcript of Record.*

Filed May 24, 1909.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

Equity. No. 26396.

CHARLES H. MERILLAT et al.

vs.

MELVILLE D. HENSEY et al.

1. Original bill and exhibits thereto attached, and file mark showing date of filing;

2. Answer of Thomas G. Hensey and Melville D. Hensey;

3. Answer of Lyman D. Landon;

4. Answer of Helen M. Soule;

5. Answer of Annie M. Holmes;

6. Answer of Charles W. Stevens;

7. Answer of Susie V. Kimberly;

8. Answer of Leonard H. Dyer;

9. Fact as to filing of replication to all answers;

10. Suggestion of death of Thomas G. Hensey, filed May 6, 1907;

11. Testimony on behalf of complainants, omitting decree pages 116 to 126, and certificate of stock page 195 because same are duplicates of exhibits to bill and of certificate in deposition of Charles W. Stevens, said testimony being filed Oct. 27, 1908;

270 12. Deposition of Charles W. Stevens, giving only questions and answers (omitting formal parts of commission), together with exhibits as follows: Letter of January 18, 1900; letter and statement of June 1, 1905; letter of December 19, 1905; letter of July 31, 1906. Certificate of interest of Charles W. Stevens;

13. Testimony on behalf of defendants filed Oct. 27, 1908;
14. Exhibit J. L. K. No. 1;
15. Opinion of the Court;
16. Decree;
17. Fact of filing and approval of bond, showing date;
18. Stipulation as to value, as to parties because of death of Thomas G. Hensey, and that certificates of interest are duplicates;
19. Copy of this order.

To the Clerk of the Court:

Please make record on appeal in the above cause according to the foregoing designation of the record.

Respectfully,

CHARLES H. MERILLAT,
MASON N. RICHARDSON,
Attorneys for Complainants.

Service accepted and 5 days' notice waived.

E. H. THOMAS AND
WM. HENRY WHITE,
Att'ys for Def'ts Except Mrs. Soule.
WALTER C. BALDERSTON,
Att'y for Mrs. Soule.

271 *Memorandum.*

June 18, 1909.—Time in which to file Transcript of Record in the Court of Appeals, extended to and including the second day of August, 1909.

272 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages from 1 to 271, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 26396 in Equity, wherein Charles H. Merillat and Mason N. Richardson, Trustees are Complainants and Melville D. Hensey, et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 22d day of July, A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2046. Charles H. Merillat et al., appellants, vs. Melville D. Hensey et al. Court of Appeals, District of Columbia. Filed Jul- 22, 1909. Henry W. Hodges, clerk.

COURT OF APPEALS,
DISTRICT OF COLUMBIA
FILED
OCT 26 1909

Henry W. White
for appellees

**In the Court of Appeals of the
District of Columbia.**

OCTOBER TERM, 1909.

No. 2,046.

CHARLES H. MERILLAT and MASON N. RICHARDSON,
Trustees, Appellants,

vs.

MELVILLE D. HENSEY, LYMAN D. LANDON, HELLEN M.
SOULE, ANNIE HOLMES, CHARLES W. STEVENS,
SUSIE V. KIMBERLY, and LEONARD H. DYER,
Appellees.

BRIEF FOR APPELLEES.

E. H. THOMAS,
WM. HENRY WHITE,
Attorneys for all Appellees except Mrs. Soule.

In the Court of Appeals of the District of Columbia

OCTOBER TERM, 1909.

No. 2,046.

CHARLES H. MERILLAT and MASON N. RICHARDSON,
Trustees, Appellants,

vs.

MELVILLE D. HENSEY, LYMAN D. LANDON, HELLEN M.
SOULE, ANNIE HOLMES, CHARLES W. STEVENS,
SUSIE V. KIMBERLY, and LEONARD H. DYER,
Appellees.

BRIEF FOR APPELLEES.

STATEMENT OF FACTS.

This cause involves the title to

part of the tract of land in the County of Washington,
District of Columbia, known as Dry Meadows, be-
ginning for the same, etc. (For full description, see
Rec. 107).

Sophia Jones and others, the owners in fee of this land,
conveyed the same to Melville D. Hensey by deed in fee,
dated February 12, 1891, (Rec. 94), who, on February,
13, 1891, conveyed to Thomas G. Hensey and John H.
Soule, Trustees, *in trust* for the benefit of the persons con-

tributing to the purchase price (Rec. 94), their interests being evidenced by certain assignable certificates signed by the trustees, one of which is set out on page 126 of the record. Melville D. Hensey, on the one day the title was in him, gave a purchase money deed *of trust* for \$6,000 and a second for \$1,500 (Rec. 94 and 92). The latter was released on April 19, 1892, to Hensey and Soule, Trustees, and the former on November 10, 1903, to Hensey and Hensey, Trustees, (Rec. 93) their successors in title, as Hensey and Soule, Trustees, conveyed by deed *in fee* to Walter R. Hensey January 30, 1894, (Rec. 93), and Walter R. Hensey conveyed, on the same day, to Melville D. Hensey and Thomas G. Hensey by deed *in trust*, recorded in the same book immediately following the previous deed, (Rec. 93, 95 and 107). These two conveyances were solely for the purpose of substituting Melville D. Hensey as trustee for John H. Soule. The terms of the two trusts are identical. (Rec. 94, 95, 107 and 122).

The *legal* title to the Dry Meadows real estate was, therefore, held by Hensey and Soule as trustees for those who contributed to its purchase (or their transferees, as evidenced by the certificates showing the interest of each) from February 13, 1891, to January 30, 1894; and by Hensey and Hensey as such trustees from that time until May 19, 1906, when they conveyed the property by deed *in fee* to the holders of the certificates, giving to each grantee the undivided interest *in fee* as shown by his or her certificate.

Complainants in Equity No. 24,084 were members of the Le Droit Park Syndicate and contributed to the purchase price of certain land, described in the bill, the title to which was taken in the name of Thomas G. Hensey and Mellen C. Hooker, trustees, the latter being *sued in their own right and as trustees of complainants as to the land involved*,

while Melville D. Hensey was sued in his own right and as *agent* of the trustees *in said trust*. This bill, filed July 18, 1903, charges misrepresentations made to obtain the contributions and misappropriation of funds of the syndicate property, but makes no mention of the Dry Meadows or other property.

Copies of the bill were taken out on July 22, 1903, and on August 20, 1903, an amended bill was filed, without leave of court, (Rec. 90) charging that (Rec. 76)

"all or a large part of the money thus wrongfully and illegally obtained by said *defendants as complainants' trustees* and agents were used in whole or in part by said defendants in the purchase of certain (other) real estate and interests in real estate in the District of Columbia and title thereto taken in their own name or names, *and it now stands in their own name* or names, the aforesaid real estate being more particularly described as follows":

(Certain lot in Square 1110.)

(Certain lot in Block 7, Effingham Place.)

"A tract of land known as 'Dry Meadows', in the County of Washington, District of Columbia, etc."
(An insufficient description).

Here follows description of various other pieces of property, and the amended bill concludes (Rec. 78):

"And complainants are advised, and therefore aver, that to the extent to which said money of your complainants and others similarly situated was thus used as aforesaid, the said defendants Thomas G. Hensey, Mellen C. Hooker and Melville D. Hensey, any, either or all of them, hold the aforesaid real estate, interests in real estate and property for your complainants and other shareholders similarly situated."

Other amended bills were filed in Equity 24,084, none of which affects Dry Meadows (Rec. 90, 91).

The prayers of the original bill were for process, discovery, deposit of books in court, receiver, injunction, accounting, removal of Hensey and Hooker as trustees, and for general relief (Rec. 73-75).

The prayers of the amended bill of August 20, 1903, were for *discovery only*, as to their interests in the property therein mentioned (Dry Meadows); but for injunction, restraining order from disposing of their interests, and for the appointment of a trustee to sell the interests, if any, in the property described in paragraph 12 of original bill (Le Droit Park Syndicate property). There is no prayer for general relief (Rec. 79).

The *Henseys* were not made parties nor sued as *trustees* of "Dry Meadows", nor as trustees under *any* trust. Thomas G. Hensey and *Mellen C. Hooker* were sued as trustees of Le Droit Park Syndicate trust, but not of Dry Meadows.

September 3, 1903, the court by order refused to appoint receivers, and enjoined Hensey and Hooker from dealing with the property of the Le Droit Syndicate only. The order has no relation to "Dry Meadows."

Testimony was taken and the cause referred to the Auditor by decree of June 29, 1905, upon whose report final decree was passed May 28, 1906, substituting complainant Merillat and Mr. E. H. Thomas as trustees for Hensey and Hooker, and awarding judgment against the Henseys and Hooker, and directing as follows (Rec. 8):

"* * * Ninth. That unless the money decree of \$53,819.17 hereinbefore directed to be made be satisfied on or before the 20 day of June, 1906, Thomas G. Hensey be and he hereby is adjudged to have held all his right, title, and interest as of date the 24 day of August, 1903, the date of the service of an amendment to complainants' bill naming said property as having been purchased with the fruits of the fraud perpetrated on his co-syndicate members by Thomas G. Hensey,

in and to the following described real estate and tract of land known as "Dry Meadows," in the County of Washington, District of Columbia, and more particularly described as follows:

"Beginning for the same at a stone marking corner late Charles R. Belt's land, and running thence with **41 $\frac{3}{4}$ degrees east 57.84 perches** to a stone, thence north 44 degrees east 1.68 perches to a stone on Broad Branch road, thence 15 $\frac{1}{2}$ degrees west 58.12 perches to Jones' line, thence north 60 degrees west 2.32 perches to a stone to place of beginning, containing 9.40 acres of land more or less as trustees for the Le Droit Park Land Syndicate, and he hereby is ordered and directed to make conveyance as of date the 24 day of August, 1903, and to have effect when recorded as of said date of all his right, title, and interest in the real estate aforesaid, to Charles H. Merillat and Edward H. Thomas as trustees for the Le Droit Park Land Syndicate, and should said Thomas G. Hensey neglect or refuse to comply with this paragraph of this decree, then this paragraph of this decree shall have the same operation and effect as if the conveyance had been executed conformably to this decree, and said Charles H. Merillat and Edward H. Thomas are authorized and directed as trustees as aforesaid to sell the interest of Thomas G. Hensey in the aforesaid 9.40 acres of the aforesaid tract, known as Dry Meadows, free and discharged from the effect of any transfers or conveyances by said Thomas G. Hensey or his grantees not of record among the land records of the District of Columbia on or before the 24 day of August, 1903, aforesaid. The manner of such sale of the interest of the said Thomas G. Hensey in the aforesaid real estate shall be as provided by Equity rule 91, of the Supreme Court of the District of Columbia. It is further declared, and adjudged, and decreed that all transfers or conveyances of the interest of said real estate not of record on or before the said 24 day of August, 1903, aforesaid, but attempted to be recorded since said date are subject and postponed to the provisions of this

paragraph of this decree and satisfaction of the aforesaid sum of \$53,819.17, unless the same have been made under the provision of some deed of trust or other prior obligation of record, prior to the aforesaid 24 day of August, 1903, and in the event that the interest of the said Thomas G. Hensey in the said real estate has been sold since 24 day of August, 1903, under some prior obligation recorded deed of trust or other obligation of record prior to the 24 day of August, 1903, then all the right, title and interest of said Thomas G. Hensey in the Equity of redemption therein is vested in Charles H. Merillat and Edward H. Thomas as trustees, for the Le Droit Park Land Syndicate, and they are hereby authorized and directed to take such steps as may be deemed necessary by them to reduce said Equity of redemption to possession."

The correct description of the Dry Meadows property is as follows:

"Part of the tract of land in the County of Washington, District of Columbia, known as 'Dry Meadows', beginning for the same at a stone a corner of the late Charles R. Belt's land, and running thence south $41\frac{3}{4}$ degrees east 57.84 perches to a stone; thence north 44 degrees, east 13.68 perches to a stone on Broad Branch Road, thence north $15\frac{1}{2}$ degrees, west 58.12 perches to Jones' line; thence north 60 degrees, west 2.32 perches to a stone, and thence south $50\frac{3}{4}$ degrees west 35 perches, to the place of beginning, containing 9.40 acres of land, more or less." (Rec. 107).

By an amended decree, passed after the institution of this suit, an attempt was made to correct the errors in the description contained in the decree of May 28, 1906. (Rec. 80).

Complainant Richardson having been substituted as trustee for Mr. Thomas (Rec. 11), Merillat and Richardson, as trustees in Equity 24,084, filed the bill in this cause (Rec.

1) against Melville D. Hensey, Lyman D. Landon, Helen M. Soule, Annie Holmes, Charles W. Stevens, Susie V. Kimberley, Leonard H. Dyer and Thomas G. Hensey, all in their own right, and (for the first time) the two *Henseys* were sued as trustees of the *Dry Meadows Syndicate*. The bill recites the money decree of May 28, 1906, in Equity 24,084, and seeks to enforce it as against the Dry Meadows property, which the bill alleges had been conveyed to Hensey and Hensey, trustees,

“in trust for certain parties, who possessed interests therein undisclosed of record. That the said Lyman D. Landon had no interest therein at any time, and more especially he had no interest therein prior to the 24th day of August, 1903,”

the date of service of amended bill filed August 20, 1903, in Equity 24,084;

and the said Susie V. Kimberley likewise was without any interest in said lands and premises prior to the aforesaid 24th day of August, 1903”;

that the two Henseys owned a six-tenths' interest in the lands until the date of a deed of May 21, 1906, when they, as trustees, and

“conspiring with themselves and some of their co-defendants, and in fraud of the rights of the complainants, and in order to defeat the execution of the decrees hereinbefore referred to and to hinder and delay your complainants, as their creditors,”

conveyed to the defendants, Stevens, Dyer, Soule and Holmes, a one-tenth interest each, and to Landon and Kimberley a three-tenths' interest each (Rec. 3).

The prayers are that this deed be set aside, the land sold, and for general relief (Rec. 4).

The answer of Thomas G. Hensey, filed August 2, 1906, (Rec. 13) says that Landon, in August, 1901, bought a one-tenth interest for \$1,200 and in September, 1901, loaned

Hensey \$1,600 on two other tenth shares, for which loan Hensey gave his collateral note, secured by the certificate for the two shares; that John H. Soule was at first a trustee with Thomas G. Hensey, and when he retired Melville D. Hensey was substituted, and has no other interest; that Thomas G. Hensey has five shares pledged for \$4,100—to Mrs. Kimberley for \$2,500 and to Landon for \$1,600; that Mrs. Kimberley loaned \$2,500 to Thomas G. Hensey in November, 1903, on a certificate of title from the Columbia Title Insurance Company; that the Dry Meadows Syndicate was organized in February, 1891; “that Charles W. Stevens, Leonard H. Dyer’s mother, Helen M. Soule and Annie Holmes had each a one-tenth share, and Thomas G. Hensey held six-tenths, and they were the original shareholders”; that the shares held by Landon for \$1,600 are forfeited and the shares held by Mrs. Kimberley will mature November 9, 1906.

The certificates are declarations of trust; they describe the land, recite the trust, the liabilities and rights of the holder and are transferable like shares of stock in a corporation—by assignment, surrender and reissue.

The certificates in evidence are:

No. 1, dated August 19, 1901, issued to Lyman D. Landon for a one-tenth share, signed by Thomas G. Hensey and Melville D. Hensey, as trustees, and by Landon, and is endorsed in Landon’s handwriting: “L. D. Landon. Broad Branch. Paid \$1,200.” (Rec. 126, 127, 123).

No. 2, dated the——day of——, 1891, issued to Kate H. Dyer, for a one-tenth interest, signed by Hensey and Soule as trustees and by Mrs. Dyer (Rec. 124).

No. 4, dated the 22nd day of August, 1891, issued to Charles W. Stevens for a one-tenth interest, signed by Hensey and Soule, as trustees (Rec. 120).

No. 5, dated November 9, 1903, issued to Thomas

G. Hensey, for a three-tenths interest, signed by Hensey and Hensey, as trustees, and by Thomas G. Hensey. It is transferred by endorsement to Mrs. Kimberley on the same day, and attached to it is a collateral note describing it, of even date, for \$2,500, signed by Thomas G. Hensey and payable to Mrs. Kimberley on or before three years. Payments of interest in Hensey's handwriting are endorsed on the note, each six months from February 9, 1904, to November 9, 1906, (Rec. 130, 131).

No. 6, dated September 5, 1901, issued to Thomas G. Hensey for a two-tenths interest, signed by Hensey and Hensey, as trustees, and by Thomas G. Hensey. This was endorsed in blank September 5, 1901. Attached thereto is a collateral note describing it, dated September 5, 1901, for \$1,600, signed by Thomas G. Hensey and payable in one year to Landon. Endorsed on the note in the handwriting of Hensey are payments of interest September 5, 1903, 1904 and 1905 (Rec. 128, 129).

The certificates for the other two-tenths, held by Mrs. Soule and Mrs. Holmes, were not offered in evidence.

The five certificates of defendants, Dyer, Soule, Stevens, Holmes and Landon's certificate No. 1 (each for a one-tenth share) were acquired many years before Equity Cause 24,084 was filed, and no party to that cause *ever* had any claim against or interest in any of the first four of these shares. Hensey and Hensey, Trustees, held the legal title to the Dry Meadows land when that suit was brought (Rec. 92-95), but they were not made parties as such trustees, and neither then had any beneficial interest in any of these five shares.

Certificate No. 6, for two-tenth shares, the blank assignment thereof and the collateral note for \$1,600 payable to Landon, thereto attached, are all dated September 5, 1901—nearly two years before Equity suit 24,084 was filed on

July 18, 1903. These were all found among Landon's papers. The signatures are genuine. Interest payments are regularly endorsed in Hensey's handwriting for three years—until 1905.

Landon's testimony, given in Equity 24,084 and offered by complainants in this case (Rec. 26-41), is that during a long course of years he gave money to Hensey for investment. Part was his own, and as to part he acted as fiscal agent for non-resident friends. His friends' money was all loaned on real estate security, and the notes, etc., were always delivered to him by Hensey (Rec. 33, 32, 84). These loans have all been settled but one on which there was a small balance due when Hensey died (Rec. 84, 88).

Landon's own money was loaned by Hensey at discretion. Sometimes on real estate and sometimes without any security. In some transactions Landon was given the securities and in others he was not. Hensey really acted as banker as well as agent (Rec. 28, 32).

In October, 1901, there was found, on a settlement, that \$5,250 was due him by Hensey (Rec. 132), who then deeded the equities in seven houses to Mrs. Dodge, to whom he owed \$3,700 and who, it seems gave a note to Landon for the \$5,250 (Rec. 27, 95). The deed was recorded in 1903, when Mrs. Dodge deeded three of the houses to Landon for the \$5,250 note (Rec. 35, 46). Later Landon lost the houses—they were sold under the deeds of trust.

Landon said he had no security for, at least none for any considerable part of, the \$5,250. (R. 33, 31). *He was not asked specifically as to the \$1,600—when he loaned it, how he paid over the money, nor whose money it was.* He is an invalid and was unable physically or mentally to testify in this case. His memory is gone (Rec. 82, 89, 106, 123).

Hensey was dead when the testimony was taken in this

case. His answer heretofore referred to says Landon made the particular loan on the particular certificate 6 as evidenced by the collateral note. Although examined at great length as a witness in Equity 24,084 by complainant Merillat as to the Dry Meadows property, he was not asked about this loan (Rec. 41 et seq.). Nothing can be found among either Hensey's or Landon's papers bearing on this loan except the assigned certificate and the collateral note attached, all in Landon's possession (Rec. 105, 86, 126). There is nothing tending to overcome the presumption arising from that fact.

Mrs. Kimberly, on November 9, 1903, loaned Thomas G. Hensey \$2,500, taking his collateral note, secured by certificate No. 5, for three shares. She had no actual knowledge of the pendency of any suit against him, but made the loan in good faith, relying on the certificate of a title company that the title was good in Thomas G. Hensey and Melville D. Hensey as trustees of the Dry Meadows property for the benefit of the holders of the certificates, on one of which she made the loan (Rec. 129).

Thomas G. Hensey's testimony, given in Equity 24,084 *and offered here by complainants*, is that the balance of the mortgage on Dry Meadows was paid off in 1903 and that he borrowed the money from Mrs. Kimberly with which to pay his share (Rec. 44). His collateral note to Mrs. Kimberly is dated November 9, 1903 (Rec. 130), and the mortgage was released the next day, November 10, 1903, (Rec. 93). Her money was, therefore, used to pay off a mortgage on the shares which were pledged to her for the loan of the money. Their purpose that she should have a lien on the land is clearly shown by his letter to her of November 4, 1903, and by the note and certificate (Rec. 129-132).

AUTHORITIES.

Lis Pendens.

At the time of filing the amended bill of August 20, 1903, in Equity 24,084, the legal title to Dry Meadows was in Hensey and Hensey, Trustees. They were not made parties as *such trustees*. The conveyance by them passed a good title to the defendants in this cause.

Miller *vs.* Sherry, 2 Wall., 237.

Merillat, et al. *vs.* Cyrus Bussey, opinion of Mr. Justice Wright, record No. 2,051 on appeal.

Green *vs.* Rick, 121 Pa. St., 130.

Bennett on *Lis Pendens*, Sec. 97.

Bryan *vs.* May, 9 App., 390.

Miller *vs.* Sherry was an action of ejectment, plaintiff deraigning title from defendant Miller and one Williams, under judicial sale in equity to Bushnell on judgment creditor's bill, filed by Lyons February 18, 1859. Defendants set up paramount outstanding title in one Benedict, who also claimed under judicial sale on judgment creditor's bill against defendant Miller, filed by Mills and Bliss in April, 1858—nearly a year before the filing of the Lyon's bill, under which plaintiff deraigned title. The court held Benedict's title bad under the following facts: Miller, having fee title and being in debt, conveyed to his son-in-law, Williams, in April, 1857, for the purpose of defrauding creditors. Mills and Bliss took judgment against Miller in October following and filed their bill against Miller alone in April, 1858, charging the conveyance by Miller to one Richardson of certain personal property and making an indefinite charge as to "*some real estate.*" Williams was not made a party. On reference to an examiner the fraudulent transfer to Williams was disclosed when, by amended

bill, the real estate was described and Williams was made a party; "process being issued against him, but the process not being served." "Williams did not answer and the bill as to him was dismissed." A receiver was appointed and, under direction of the court, Miller conveyed to him and he in turn conveyed to Benedict in July and August, 1861, respectively. In the junior bill, under which plaintiff de-raigned title, Miller, his wife, and Williams were parties, and "Miller and Williams answered the bill" and the sale was by the master who conveyed in September, 1860. The court held:

"It (the Mills and Bliss bill) did not create a *lis pendens*, operating as notice, as to any real estate. To have that effect, a bill must be so definite in the description, that any one reading it can learn thereby what property is intended to be made the subject of litigation. In *Griffith vs. Griffith*, it is said:

"To have made such a bill constructive notice to a purchaser from the defendant therein, it would have been necessary to allege therein that these particular lots, or that all the real estate of the defendant in the city of New York had been purchased and paid for, either wholly or in part, with the funds of the infant complainant. Or some other charge of a similar nature should have been inserted in the bill, to enable purchasers, by *an examination of the bill itself*, to see that the complainant claimed the right to, or some equitable interest in, or lien on, the premises' (P. 250).

"There is another reason why the bill could not operate as constructive notice. Williams, who held the legal title, was not a party. 'We apprehend that to affect a party as a purchaser *pendente lite*, it is necessary to show that the holder of the legal title was impleaded before the purchase which is to be set aside.' The principle applies only to those who acquire an interest from a defendant *pendente lite*. The title passed from Williams to Bushnell.

The amended bill was undoubtedly sufficient, and it made Williams a party. But he was not served with process, and if he had been, this bill could have operated only from the time of the service. Where the question of *lis pendens* arises upon an amended bill, it is regarded as an original bill for that purpose. It was a gross irregularity to take a decree against Miller without Williams being before the court, and if the attention of the court had been called to the subject, the amended bill must have been dismissed. The decree against Miller as to the premises in controversy is a legal anomaly. But it is unnecessary to consider this subject, because before the amended bill was filed, the proceedings under the bill of the Lyons had been brought to a close, and the title of Bushnell consummated. His rights could not be affected by anything that occurred subsequently" (P. 251).

In *Green vs. Rick, Green and Kelly*, owners in fee of certain land, gave a mortgage to Rick, securing two bonds—for \$1,100 to him and \$900 to another. This \$1,100 belonged to Magdalena Pieffer, who had under trust placed with Rick certain property and who thereafter revoked the trust and successfully prosecuted bill in equity against him for its return. After revocation and filing of bill, but before decree, Green and Kelly sold the property to a Building Association, which reserved part of the purchase price with which it paid the \$1,100 bond, with interest, to Rick, without knowledge of Pieffer claim, and also paid the other bond to its holder. The mortgage was satisfied and the bonds were delivered. The court said (P. 141):

"If, therefore, Rick had sold this bond and mortgage to the Building Association, pending the proceedings on the bill in equity, the principle of *lis pendens* would apply without doubt; but we are not aware that the doctrine has ever been carried to cases where

the party to be affected by it was not strictly a purchaser, *pendente lite*, of the property in litigation: See Wade on Notice, 360. In this case it was the land that was sold, not the mortgage, and it was the title to the latter only that was involved in the suit. There is another reason why *lis pendens* has no application here; those persons only are charged with notice or affected by *lis pendens* who purchase from parties to the suit: *Stuyvesant v. Hone*, 1 Sand. Ch., 419; *Parks v. Jackson*, 11 Wend., 442; Wade on Notice, 369, and other cases were cited. The land was conveyed to the Building Association, not by Rick, but by the Kellys and Green, who were not parties to the suit. The Building Association purchased the land subject to the mortgage, payment of which they assumed; they had no right to suppose, in the absence of any notice to the contrary, that the ownership of the mortgage was not as it appeared upon the record; they paid the money in good faith upon this assumption; they were innocent of the injury to Mrs. Pieffer and are entitled to protection. When one of two innocent persons must suffer loss by the default of a third person, if their rights are otherwise equal, that one should bear it who put it into the power of the defaulter to inflict the loss. As between Magdalena Pieffer and the Building Association, who would both appear to be innocent parties, the loss, if one must be borne, should therefore fall on Mrs. Pieffer, who originally placed Rick in a position to inflict it" (P. 142).

If it be contended that the certificate is personal property belonging to Hensey at the time of the amendment to which he was made a party, then the personal property was not described (the certificates not being mentioned at all) and there is no *lis pendens*.

Bennett, Secs. 84, 92, 93 and 128.

In any event the description is insufficient—no land is described at all in the amended bill.

Miller *vs.* Sherry, 2 Wall., 237, and cases reviewed.

The mere reference, in the amended bill, to a deed in the recorder's office was insufficient to make it a part of the bill for this purpose.

Cammack *vs.* Carpenter, 3 App., D. C., 226.
Bennett, Sec. 93a.

The amended bill was filed without leave after copy of bill was taken out, and it is not *lis pendens*.

Bennett, Sec. 139.

Elementary principles, announced by Bennett, are that there is no presumption of fact in aid of *lis pendens*, Sec. 130; no imputation of fraud on grantees, Sec. 140; and the rule is not favored in courts of equity because it so frequently works hardship on the innocent (Sec. 125).

The *lis pendens* rule is limited, not only to property described and to purchasers from parties, but to the "*property in dispute*."

Pomeroy Eq. Sec. 633, and cases cited.

"Nor does its operation extend beyond the prayer for relief."

"Proper and specific allegations are a necessary requisite."

Pomeroy Eq. Sec. 634, and cases cited.

The prayers of the amended bill are insufficient to make it *lis pendens*. The only prayer relating to the Dry Meadows land is No. 4 $\frac{1}{4}$, and it prays for *discovery only*. The other prayers (4 $\frac{1}{2}$ and 4 $\frac{3}{4}$) relate only to the property described in the original bill. There is no prayer for general relief in the amended bill.

Pomeroy, Eq. Sec., 634.
Bennett, Sec., 94.

In *Brightman vs. Brightman*, 1 R. I., 120, the court said:

"The prayer of the complainant's petition was for divorce and for alimony out of her husband's estate. It did not affect the title to his real estate, or necessarily seek to put an incumbrance on it. Alimony has to be granted out of the personal or real estate, and not necessarily a charge on either. Had the prayer in this case been for alimony to be assigned her out of this particular farm, the case would have somewhat resembled some of the cases in the books, where the rule has been applied. But it is not so; it is general for alimony out of his estate * * *. We do not think this case falls within the rule of *lis pendens* nor within the reason of that rule."

It is elementary that if there be no specific claim to or against the property described, or if the property is merely collateral, there is no *lis pendens*.

The original bill had two objects, viz., to require an accounting of the Le Droit Park Syndicate funds by the trustees of the fund and for their removal as such trustees, and these two only; the other prayers are all administrative to those two ends.

The amended bill of August, 1903, alleged that part of that fund had been used in the purchase of Dry Meadows and asked for a *discovery only*. It was, as to Dry Meadows, purely collateral to the suit—an allegation of further misconduct in support of its two objects—accounting and removal of Hensey and Hooker as trustees of Le Droit Park Syndicate.

If the allegations of the amended bill had been true, complainants might have elected, either to claim the Dry Meadows land or require an accounting of their money used in its purchase. They could not rightly claim the land and the money also. They had to elect. The price paid for

the land may have been high and they were afraid to ask for it, and thus ratify their trustees' investment. There was a penalty in demanding the land.

In *Bank vs. Kern*, 193 Pa. St., 66, the bill was filed by a judgment creditor, charging defendants with transferring their property to avoid collection of his claim. The Act of June 16, 1836, authorized the issue of a *scire facias* against parties and transferees in such cases which would create a lien *upon plaintiff's giving bond*. This he did not do, for the evident reason that he feared the liability on the bond.

"As a bill for discovery for the purpose of obtaining evidence, and in aid of a legal right, it did not draw the whole case into equity. The jurisdiction was for discovery only, and ended with it. As a *scire facias* provided for by the Act of June 16, 1836, was not issued, a lien was not acquired as against other attachments."

By asking for discovery only in aid of their claim for an accounting of the Le Droit Park Syndicate funds they left the Dry Meadows land merely a collateral matter. Even if the amended bill had *required an accounting* as to the Dry Meadows property, still there would have been *no lis pendens*.

In *Worley vs. The Earl of Scarborough*, 3 Atkyn's Rep., 392, the court said:

"No case has gone so far, and it would be very inconvenient, if where money is secured upon an estate, and there is a question depending in this court upon the right of or about that money, *but no question relating to the estate, upon which it is secured, but is wholly a collateral matter, that a purchaser of the estate pending that suit should be affected with notice by such implication as the law creates by the pendency of a suit.*"

Crofts *vs.* Oldfield, 3 Swanston's Rep., 277, lays down the rule :

"Where the lands or the profits of the lands, which is all one, are directly in demand, the title is bound from the bill exhibited, and every purchaser *pendente lite* comes in at his peril; but where an account of profits is prayed by way of execution of a trust, there the person only is charged for breach of trust in not applying the profits, and the land is not charged but while in his hands, nor then neither till sequestration; so purchasers and devisees before sequestration are free."

In Griffith *vs.* Griffith, 1 Hoffmon Ch., 153, the original bill was against the father of the infant plaintiff,

"seeking to call him to account, for certain moneys received by him out of the estate of the infant, given him by will, and misapplied by the defendant. It stated various acts of misconduct, and prayed a discovery of the moneys received, and of the application of the same, in what securities they were invested, what real thereof, and injunction and receiver and the removal estate belonged to the complainant, and the income of the father as guardian, and appointment of another."

The defendant admitted he made no separate investments of his son's money, but invested the same with his own chiefly in real estate, and specified certain property which he owned. Next a petition for injunction and receiver was filed, especially as to certain of the property mentioned by it which was allowed, but before petition for injunction was filed the father conveyed the property for valuable consideration. After the above proceeding supplemental bill was filed, bringing the purchasers before the court, charging them with actual notice and notice of proceedings in court through their attorney. The court said (P. 160):

"The result of these cases is that notice arising from a bill filed in this court is notice of what that bill contains, and nothing more. * * *.

Another rule to be drawn from the cases is, that collateral proceedings in a cause by which land becomes affected, are not constructive notice where the bill is not such."

After discussing the finding of the master that the purchaser had actual notice of the suit, the court said (P. 161) :

"But although the finding is explicit, that Wheaton knew that the complainant had filed a bill, and that the premises in question were the subject of litigation in chancery, still this court has before it the fact as to the form and mode in which that litigation existed; not expressly in a bill, but in collateral proceedings taken under a bill, which in itself plainly did not affect the property in question as against the purchaser."

See also 5 A. and E. Anno., cases 332, note.

The mere allegation as a conclusion of law that complainants had a right to Dry Meadows because of the use of the Le Droit Park fund in its purchase did not make it *lis pendens* because the right was not attempted to be enforced in the suit.

Briscoe *vs.* Bronough, 1 Tex., 332.

Alternative allegations, even, would not have been sufficient; that is, a purpose expressed to recover of Hensey and Hooker if possible; if not then to resort to Dry Meadows.

White *vs.* Perry, 14 W. Va., 66, 75, a well-considered case.

There are no such allegations here, but there is an alternative decree to the same effect, passed after date of deed to defendants.

The allegations of the bill are absolutely unfounded in

fact. Dry Meadows was bought in 1891 and then paid for, saving a purchase money mortgage of \$6,000 and a second mortgage to Hensey for \$1,500. Not for two years thereafter did Hensey or Hooker handle a cent of Le Droit Park Syndicate money, and there is not one word of evidence that one cent of Le Droit Park Syndicate money ever went into Dry Meadows; while there is positive proof by complainants' witness, Hensey, that Mrs. Kimberly's money was used to pay part of its purchase money mortgage.

Defendants Stevens, Dyer, Holmes and Soule.

The certificates of these defendants are all dated in 1891, two years before the formation of the Le Droit Park Syndicate. The proof fails to connect their interests in any manner with Equity Cause 24,084. They had fully paid for their shares years before it was filed.

Equal Equities—Mrs. Kimberly.

The title examiner found the legal title of record in trustees in trust for the benefit of the holders of certain transferable declarations of trust. No other matter of record related to these trustees. They so reported to Mrs. Kimberly, who then became a purchaser, *pro-tanto* at least, of one of the declarations—a three-tenth's interest in the property. The amended bill does not mention either the trustees or the declarations, and does not describe either this or any other property. Its description of title is misleading. It says "title thereto taken in their own names, and it now stands in their own name or names."

Mrs. Kimberly acted in absolute good faith, and had no notice of the amended bill; even if she had read it, she would have found it asking for information only—a "fishing bill."

No mention was made anywhere of any purpose to subject any property included in the amendment to any claim of complainants in Equity 24,084.

The equity of complainants is not equal to the equity of Mrs. Kimberly; but if the equities were equal, the legal title under the deed to her in settlement of her *lien debt will prevail*.

"Corcoran's assignment was fair, and accepted on his part without knowledge of Judson's; nor is the contrary alleged in the bill. And, assuming Judson's to be fair also, and that no negligence could be imputed to him, then the case is one where an equity was successively assigned in a *chose in action* to two innocent persons, whose equities are equal, according to the moral rule governing a court of chancery. Here Corcoran has drawn to his equity a legal title to the fund, which legal title Judson seeks to set aside, and asks an affirmative decree in his favor to that effect.

Now nothing is better settled than that this cannot be done. The equities being equal, the law must prevail."

Judson *vs.* Corcoran, 17 How., 614.

"The appellant here has the legal title and the possession, without fraud or any unfairness. He found the land subject to entry by the records of the land office, and he bought and paid for it, and has the title. In such case the maxim applies in all its force, that better is the condition of the defendant. The equities of the parties being equal, the legal title must prevail.

Instead of the weak case made by the appellee, the position of affairs required him to make clear and satisfactory proof of his superior equity. This he has signally failed to do."

Simmons *vs.* Ogle, 105 U. S., 277.

"Having at least equal equity with the trustees, it was perfectly justifiable in them to obtain a superiority by buying in the legal estate."

Fitzsimmons *vs.* Ogden, 7 Cranch, 18.

Subrogation—Mrs. Kimberly.

Complainants' claim, at the utmost, is limited to the interest in the land which Hensey may have had on August 24, 1908, the day of service of the amended bill. The decree in Equity 24,084 undertakes to go no further, and their bill herein does not go so far.

On that day Hensey's interest was liable to its share of the purchase money mortgage on the land under the lien of the mortgage and by express term of the certificate. The money borrowed from Mrs. Kimberly on *November 9* was used in paying off that mortgage on *November 10*. She is subrogated to the lien of the mortgagor—a prior lien to complainants.

Pratt *vs.* Law, 9 Cranch, 455.

Taylor *vs.* Mac Greal, 15 App., D. C., 32.

Hensey's agreement to give the lien is good in equity as against him,

U. S. *vs.* Groome, 13 App., D. C., 460.

Woarms *vs.* Hammond, 5 App., 346.

Hume *vs.* Riggs, 12 App., 355.

Brown *vs.* Pierce, 7 Wall., 205, 217, 218.

Hampton *vs.* Edelen, 2 H. and J., 64, and Brantley's notes on same.

and as above shown, as against complainants by subrogation.

Presumption and Burden of Proof—Mr. Landon.

It is elementary law of bills and notes that "title and possession are considered as one and inseparable," and

"in all cases where the bill can be used as evidence either against the parties, or against third persons, the same legal presumption arises of its having been given

for value received, as exists in relation to a deed expressed to be given for a valuable consideration. In this respect bills of exchange and negotiable notes are distinguished from all other parol contracts, by authorities which are not now to be questioned."

Mandeville *vs.* Welch, 5 Wheat., 282.

Moses *vs.* Bank, 149 U. S., 302.

"*Prima facie*, the liability of the undertaker is co-extensive with the face of the note."

Oakley *vs.* Boarman, 21 Wend. (N. Y.), 588, 591.

These presumptions make certain Landon's right to the two-tenth's interest under certificate 6. If more were needed, we have Hensey's admissions, the payment of interest and the deed by the trustees to defendants.

"In this case, the *onus* of proof throughout is upon the plaintiffs. It is incumbent upon them, * * * to show by clear and indubitable proof that the deed assailed is the offspring of the fraud and collusion of the grantor and grantee therein. The case cannot rest upon presumption merely, because fraud is never presumed; and in this case * * * there is not that clear and definite proof to overcome the *prima facie* validity of the deed, * * *. The question is, not what Albert M. Ridenour (grantor) may have intended, or what reasons may have influenced him in making the deed, whether to defeat the claim of the plaintiffs or not; if the grantee in the deed has done nothing improper to procure its execution, but only accepted the deed, upon adequate valuable consideration, in good faith. In such case, *the deed is beyond impeachment by the creditors of the grantor*. This is settled and fully illustrated by the case of Marbury *vs.* Brooks, 7 Wheat., 556, and S. C., 11 Wheat., 78."

Droop *vs.* Ridenour, 11 App., D. C., 240.

McDaniel *vs.* Parish, 4 App., D. C., 222.

Landon's other certificate (No. 1) was purchased by him two years before Equity No. 24,084 was filed.

Complainants Bound by Testimony.

The testimony of defendants was offered by complainants, who are bound by it. It establishes the *bona fides* of the transaction. Alleged discrepancies do not aid complainants.

Dravo *vs.* Fabel, 132 U. S., 487, 489.

Clark *vs.* Krause, 2 M., 568.

Even if Landon's failure to testify be not explained satisfactorily to complainants, their failure to compel him to do so is an abandonment of their demand.

Clark *vs.* Krause, 2 M., 568.

The failure to find Landon's old receipts and memoranda of his dealings with Hensey is unimportant.

Clark *vs.* Krause, 2 M., 269.

Scope of Suit.

The gravamen of the bill is the conspiracy and actual, active fraud charged, upon the part of defendants. It sets out the judgment in favor of complainants against the Henseys, the deed by them as trustees to defendants, says the Henseys owned at least a six-tenths interest in the land,

"which has in and by said deed * * * been fraudulently conveyed to said parties, some or all of them, and more especially to the said Lyman D. Landon and to the said Susie V. Kimberly for the purpose of hindering, delaying and defrauding the creditors of the said Thomas G. Hensey and Melville D. Hensey, and should be cancelled and declared null and void.

"That * * * the said Thomas G. Hensey and Melville D. Hensey, trustees, as aforesaid, conspiring with themselves and some of their co-defendants, and in fraud of the rights of the complainants, and in order to defeat the execution of the decree hereinbefore referred to and to hinder and delay your complainants,

as their creditors, as well as all other persons possessing true and lawful claims against them, did by their deed * * * convey the said lands * * * to the defendants * * *. That the interests of the said defendants are by said deed wrongfully and fraudulently, and for the purpose as hereinbefore stated of fraud on the right of the creditors * * *, stated to be as follows: * * *"

"And the object of this proceeding is to subject the said interests of the said Thomas G. Hensey and Melville D. Hensey in said lands and premises to the payment of said judgment or decree."

The prayers are for process, that the deed

"be set aside, and declared fraudulent for the reasons set forth in this bill, and all the right, title and interest of the said Thomas G. Hensey and Melville D. Hensey in and to the said land * * * be sold, and from the proceeds of sale * * * the judgment and decree hereinbefore referred to be paid",

for the appointment of trustees to make sale and for general relief.

Where a bill charges actual and intentional fraud, and prays for a relief on that ground, the complainant cannot, under the prayer for general relief, rely on circumstances which may amount to a case for relief, under a distinct head of equity, although those circumstances substantially appear in the bill, but are charged in aid of the actual fraud.

Clark *vs.* Krause, 2 M., 574, and cases cited.

Droop *vs.* Ridenour, 11 App., D. C., 242.

Respectfully submitted,

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